# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1934

# No. 213

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## WEST OHIO GAS COMPANY, APPELLANT,

*vs.*

## THE PUBLIC UTILITIES COMMISSION OF OHIO

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APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

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## IN SUPREME COURT OF OHIO

No. 24105

WEST OHIO GAS COMPANY, a Corporation Organized and Existing Under the Laws of the State of Ohio, Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, Defendant in Error

PETITION IN ERROR—Filed April 1, 1933

Plaintiff in error hereby files with this honorable court its petition in error in the above entitled cause, wherein plaintiff in error states:

Plaintiff in error is a corporation organized and existing under the laws of the state of Ohio, and is engaged as a public utility in the business of manufacturing, distributing and/or supplying artificial and/or natural gas to consumers within said state of Ohio. Plaintiff in error owns and in the carrying on of said business operates and uses certain property within said state of Ohio. One of the communities within which plaintiff in error renders its said gas utility service is the city of Kenton, Ohio, wherein plaintiff in error supplies natural gas to its customers. Said city of Kenton is a municipal corporation organized under the laws of the state of Ohio.

Defendant in error is an administrative body created under the laws of the state of Ohio and given by said laws certain powers to regulate public utilities operating within the state of Ohio including the power to regulate reasonably rates and charges made by public utilities for their services.

On or about the 16th day of July, 1929 said city of Kenton, purporting to act under the provisions of sections 614-44 and 3983 of the General Code of Ohio, passed an ordinance [fol. 3] No. 663 purporting to fix and regulate the maximum

price which plaintiff in error should be permitted to charge for natural gas furnished to consumers within said city of Kenton during a period of two (2) years from and after August 16, 1929. Thereafter on or about August 16, 1929 plaintiff in error filed with defendant in error its appeal from said ordinance, and elected, pending the determination of said appeal, to charge the schedule of rates in force and effect on said date of July 16, 1929, all as authorized and provided for by sections 614-44, 614-45 and 614-46 of the General Code of Ohio. In and by said appeal plaintiff in error prayed that defendant in error should find and determine that the said rate fixed by said ordinance No. 663 was unjust, unfair, unreasonable, confiscatory and unlawful and should after hearing fix and determine fair, just and reasonable maximum rates to be charged by plaintiff in error for and during said ordinance period. Said appeal was docketed with defendant in error as cause No. 5666.

By order entered by defendant in error on or about August 21, 1929, plaintiff in error was required, as a condition precedent to its continuing during the pendency of said appeal to charge the rates in effect on July 16, 1929, for said gas utility service rendered within said city of Kenton, to furnish a bond with proper and adequate surety in the sum of $40,000.00. On or about August 24, 1929 said bond was filed as required. Thereafter on or about December 17, 1931 defendant in error ordered and directed plaintiff in error to file an additional bond, with good and adequate surety, and on or about January 6, 1932 plaintiff in error filed and had approved by defendant in error an additional bond as required by said order in the further sum of $54,000.00.

After the filing of said appeal as aforesaid, defendant in [fol. 4] error proceeded to hold hearings in said cause as to the valuation of property of plaintiff in error used and useful in rendering such gas utility service within said city of Kenton, and on or about January 27, 1932 entered a final valuation order in said cause, finding that the value as of August 15, 1929 of the property of plaintiff in error used and useful in rendering said gas utility service to consumers within said city of Kenton was $189,856.56. Thereafter on or about February 19, 1932, and within the time required by statute, plaintiff in error filed a petition for rehearing as to said final valuation in said cause, which petition for rehearing was denied by defendant in error under date of February

25, 1932. No appeal was taken from said final valuation order.

After the entry of said final valuation order in said cause, defendant in error proceeded to hold hearings and receive evidence relative to the revenues derived from, the cost of, and the net return earned in, gas utility service rendered by plaintiff in error to consumers within said city of Kenton. Hearings on said matters were completed on or about July 19, 1932 and said case was closed. Thereafter on or about March 8, 1933 defendant in error by order entered without notice to plaintiff in error, directed that the annual reports which plaintiff in error had filed with defendant in error for the calendar years 1928, 1929 and 1930 be made a part of the record in said cause.

Thereafter on or about March 10, 1933 defendant in error entered a final judgment, decision and order in said cause (hereinafter for convenience generally referred to as the "final order") finding that the maximum rates and charges fixed for said gas utility service in and by said ordinance No. 663 of said city of Kenton, appealed from as aforesaid, were insufficient, unjust and unreasonable rates and charges for [fol. 5] plaintiff in error to receive, and that the following named rates and charges, to-wit:

| | |
|---|---|
| 400 cubic feet or less used per month | $1.00 |
| Next 2600 cubic feet used per month | 95¢ per thousand cubic feet |
| Next 3500 cubic feet used per month | 85¢ per thousand cubic feet |
| Next 3500 cubic feet used per month | 80¢ per thousand cubic feet |
| Over 10,000 cubic feet used per month | 75¢ per thousand cubic feet |
| House Heating (as defined by company's schedule on file) ..... | 60¢ per thousand cubic feet |

were just and reasonable rates and charges to be collected for such service, and should be substituted for said rates and charges named in said ordinance and made effective not only for the period of said ordinance, but also after said period to February 16, 1933, the date on which said city of Kenton passed another ordinance purporting to

regulate rates and charges of plaintiff in error for gas utility service rendered within said city of Kenton.

In and by said final order defendant in error asserted that the gross and net revenues derived by plaintiff in error from gas utility service within said city of Kenton under said rates and charges so fixed for said period would be sufficient to yield plaintiff in error during said period a reasonable compensation for such service; and directed plaintiff in error to refund to consumers served by it within said city of Kenton during said period from August 16, 1929 to February 16, 1933 the difference between the amounts actually collected by plaintiff in error from said consumers for such service rendered during said period and the amount which would have been charged such consumers for such service if the said rates and charges fixed by defendant in error in said final order had actually been charged during said time. Defendant in error accompanied its said final order with a written opinion. On or about March 18, 1933, plaintiff in error filed with defendant in error its application for rehearing in said cause, which application was denied by defendant [fol. 6] in error on or about March 22, 1933, and to which denial plaintiff in error then and there duly excepted.

Plaintiff in error says that there is error in said record, decisions, orders, judgment and proceedings of said defendant in error in said cause No. 5666, which is prejudicial to plaintiff in error, affects materially its substantial rights, and deprives it of its property for public use without adequate compensation and denies it due process of law in violation of the XIV amendment of the constitution of the United States and the constitution of the State of Ohio; and says that said final order entered in said cause on March 10, 1933 is invalid, unlawful and unreasonable in the following respects, inter alia, to-wit:

1. Said final order, if enforced, will confiscate and take from plaintiff in error for the period during which said order is made effective, to-wit, from August 16, 1929 to February 16, 1933 (hereinafter for convenience generally referred to as "rate period"), and during each and every year of said rate period, the property used by plaintiff in error in rendering gas utility service within said city of Kenton; and will prevent plaintiff in error from earning an adequate and compensatory rate of return on

the value of said property during said rate period and each and every year thereof; all in contravention of the XIV amendment of the constitution of the United States, and also on contravention of the constitution of the state of Ohio.

2. The action of defendant in error in failing to accord due and proper weight to the evidence introduced in said cause, in disregarding many of the facts established by such evidence, in making findings in said cause that are wholly unsupported by any evidence in said cause and contrary to the facts established by such evidence, and in entering an order in said cause based on such unwarranted findings; is a denial to plaintiff in error of due process of law—all in contravention of the XIV amendment of the [fol. 7] constitution of the United States, and also in contravention of the constitution of the state of Ohio.

3. The action of defendant in error in ordering and directing plaintiff in error to make refunds to consumers of gas utility service rendered by plaintiff in error within said city of Kenton during the said rate period, but in failing to consider the evidence as to the actual earnings of plaintiff in error during said rate period, and each calendar year of said rate period, and in failing to determine therefrom by what amount, if any, the net return earned by plaintiff in error from such service during said rate period, and each such year thereof, exceeded the amount which plaintiff in error must be permitted to earn if the confiscation of its property devoted to such service is to be avoided, is erroneous, arbitrary, illegal and unlawful, is a denial to plaintiff in error of due process of law and results in the confiscation for public use of the property of plaintiff in error devoted to such service—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

4. Defendant in error erred in failing and refusing to determine upon the basis of the evidence the net return which would be earned by plaintiff in error if the rates fixed by said final order are made applicable to gas utility service rendered by plaintiff in error within said city of Kenton during said rate period, and during each of the years covered thereby. Such a determination would neces-

sarily show that if said rates fixed are put in effect, plaintiff in error would not during said rate period or during any of the calendar years in all or part of which said rates would be effective, obtain a reasonable and compensatory return upon the fair value of its property devoted to such service. The action of defendant in error in entering in said cause a final order that is not based upon a correct determination of the amount of such net return, was a [fol. 8] denial to plaintiff in error of due process of law; and, if said final order is not set aside, it will cause the confiscation of plaintiff in error's property for public use without adequate compensation during said ordinance period, and during each calendar year thereof—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

5. The action of defendant in error in fixing the general and miscellaneous expense of plaintiff in error to be taken into account in determining the net return earned from gas utility service rendered within said city of Kenton, by taking plaintiff in error's average system cost per customer for such item of expense for the twelve month period ending August 1, 1929 and multiplying such amount by the number of customers of plaintiff in error in said city of Kenton, is an inaccurate, arbitrary, unreasonable and unlawful method of determining such items of expense incurred by plaintiff in error in rendering said service within said city of Kenton, disregards the facts in evidence as to the true amount of such expense incurred in such service, and is a denial to plaintiff in error of due process of law—all in contravention of the XIX amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

6. The action of defendant in error in neglecting and refusing to consider the evidence as to the revenue derived and expenses incurred by plaintiff in error in rendering gas utility service within said city of Kenton during the period subsequent to the twelve-month period ending August 1, 1929, and in determining the issues before defendant in error in said cause on the basis of figures showing revenues and cost of service for the said twelve-month period ending August 1, 1929, after arbitrarily reducing

the actual expense for said period, and in ignoring and disregarding the evidence introduced in said cause as to [fol. 9] actual revenues and cost of service during the period for which rates are to be fixed in said cause, is arbitrary, unreasonable and unlawful, and disregards, to the detriment of plaintiff in error, the facts in evidence as to the true amount of such revenues derived, and such expenses incurred, in such service, results in the confiscation of the property of plaintiff in error for public use without adequate compensation and is a denial to plaintiff in error of due process of law—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

7. The action of defendant in error in determining the question whether any refunds, and, if any, what amount of refunds, should be made by plaintiff in error to consumers of gas utility service rendered by it within said city of Kenton, by considering the earnings of plaintiff in error from such service during the twelve-month period ending August 1, 1929, and by disregarding the facts established by the evidence as to the earnings of plaintiff in error from such service during the actual period for which said rates were to be fixed, is an erroneous, unreasonable and unlawful method of determining such question, even if defendant in error had followed the evidence as to the operating expenses of plaintiff in error in rendering such service during said twelve-month period, results in the confiscation of plaintiff in error's property for public use without adequate compensation, and is a denial to plaintiff in error of due process of law—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

8. The action of defendant in error in refusing to grant the rehearing in said cause duly prayed for by plaintiff in error, and thereby denying plaintiff in error the right to [fol. 10] show in evidence in said cause the exact effect which the rate fixed by defendant in error would have on the net earnings of plaintiff in error during the rate period fixed by said final order, and each and every year thereof, was arbitrary and unlawful and a denial of due process of law to plaintiff in error—all in contravention of the XIV amendment of the constitution of the United States, and

also in contravention of the constitution of the state of Ohio.

9. The action of defendant in error in refusing to grant the rehearing in said cause duly prayed for by plaintiff in error, and thereby denying to plaintiff in error the right to show in evidence the facts as to its revenues received, expenses incurred and net earnings derived in rendering gas utility service within said city of Kenton for the calendar year 1932 and for the first two months of 1933, all being facts that were not available when hearings were completed in said cause, was arbitrary and unlawful and a denial to plaintiff in error of due process of law—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

10. The action of defendant in error in refusing, as requested by plaintiff in error in its application for rehearing duly filed in said cause to place in evidence in said cause the annual reports filed by plaintiff in error with defendant in error for the years 1931 and 1932, was arbitrary and unlawful, and a denial to plaintiff in error of due process of law—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

11. Under said rates provided for by said final order, as aforestated, plaintiff in error would not have secured from gas utility service rendered to consumers within said city [fol. 11] of Kenton during the years 1929 to 1932, both inclusive, or during any of said years, sufficient revenues to pay the reasonable costs of rendering said service and give plaintiff in error a fair, adequate and compensatory return on the value, as found and fixed by defendant in error in its final valuation order in said cause dated January 27, 1932, of the property devoted by plaintiff in error to said public service during said rate period.

12. Under said rates provided for by said final order, as aforestated, plaintiff in error would not, during such part of 1933 as said final order provides said rates shall remain in effect, secure from said gas utility service rendered within said city of Kenton sufficient revenues to pay the reasonable costs of rendering such service and give plaintiff in error a fair, adequate and compensatory return on the value, as

found and fixed by defendant in error in its final valuation order in said cause dated January 27, 1932, of the property devoted by plaintiff in error to said public service during said rate period.

13. Defendant in error in fixing rates in said cause and in finding that said rates fixed would produce adequate revenues to pay the cost of gas utility service rendered by plaintiff in error within said city of Kenton and to yield plaintiff in error a fair return upon the fair value of the property devoted to said service, has improperly ignored the evidence as to cost of service and has either arbitrarily reduced below the actual cost thereof or disregarded entirely, many items of operating expenses incurred by plaintiff in error in rendering said service, and by such method has attempted to confiscate the property of plaintiff in error for public use without adequate compensation.

The principal instances in which defendant in error has so erred, are as follows:

(a) By arbitrarily disregarding and refusing to consider [fol. 12] the actual expenses incurred by plaintiff in error during said rate period in rendering gas utility service within said city of Kenton.

(b) By arbitrarily ignoring, in determining net return earned by plaintiff in error from said service for the twelve-month period ending August 1, 1929, a large part of the expense to plaintiff in error arising because of unaccounted gas losses actually suffered by plaintiff in error in rendering gas utility service within said city of Kenton, and thereby substantially reducing below actual cost to plaintiff in error the expense item of gas purchased by it for use in rendering such service.

(c) By arbitrarily eliminating as an operating expense, in determining net return earned by plaintiff in error from said service for said twelve-month period, a substantial part of the general and miscellaneous expense actually incurred by plaintiff in error in rendering gas utility service within said city of Kenton.

(d) By arbitrarily failing and refusing to include as an operating expense in connection with rendering gas utility service within said city of Kenton, the expenses of plaintiff in error in its appeals from rate ordinances passed by said

city of Kenton, and by failing and refusing to consider such item of expense, amortized, respectively, over the terms of such ordinances, in determining the net return earned by plaintiff in error from such service.

(e) By arbitrarily refusing, in determining net return [fol. 13] earned by plaintiff in error from said service during said twelve-month period, to allow as an item of operating expenses an adequate amount for retirement reserve, which amount should have been an amount not less than the sum of $4,154.58 per annum claimed by plaintiff in error.

(f) By arbitrarily eliminating, in determining net return earned by plaintiff in error from said service during said twelve-month period, the annual allowance of $2,983.20 heretofore authorized by defendant in error for amortization of the gas transmission main now being used in rendering gas utility service to consumers within said city of Kenton.

(g) By arbitrarily reducing, in determining net return earned by plaintiff in error from said service during said twelve-month period, the item of expense for excise tax paid to the state of Ohio by plaintiff in error in connection with the business of rendering gas utility service within said city of Kenton.

(h) By arbitrarily disregarding the fact established by the evidence that commencing with the year 1932 the excise tax which plaintiff in error is required to pay the state of Ohio in connection with rendering gas utility service within said city of Kenton has been increased from 1.35% per annum of the revenues derived from such service to 2.35% per annum of such revenues.

(i) By arbitrarily reducing, in determining net return earned by plaintiff in error from said service during said twelve-month period, the item of expense of plaintiff in [fol. 14] error for federal income tax in connection with earnings from gas utility service rendered within said city of Kenton.

14. Said final order lowering, retroactively, without the consent of plaintiff in error, the rates that have been charged by plaintiff in error for gas utility service rendered within said city of Kenton during said rate period, when plaintiff in error, under the rates actually charged,

has earned during said rate period an annual return of less than 8% on the fair value of the property devoted by it to such service, is arbitrary, unreasonable and unlawful, is in conflict with the evidence in this cause and results in the confiscation of its property.

15. The finding of defendant in error that rates for gas utility service within said city of Kenton should be fixed on a basis that would permit plaintiff in error to earn an average return per annum of only 6% on the value of its property devoted to such service and that a return at such rate would be a fair, reasonable, adequate and non-confiscatory return to be earned by plaintiff in error from such service during said rate period, and each of the years within said period, is arbitrary, erroneous and unlawful, is not supported by the evidence in said cause, and results in the confiscation of the property of plaintiff in error devoted to such service. If confiscation is to be avoided the rates which have actually been charged by plaintiff in error during the pendency of said cause could not be reduced for said rate period, or any part thereof, unless and except to the extent, if any, that it were shown that during such time, or part thereof, plaintiff in error has earned from such service a return at a rate greatly in excess of said 6% per annum on such property, to-wit: in excess of at least 8% per annum. The evidence in said cause establishes that at no time during said rate period has plaintiff in error earned a return as high as 8% per annum.

16. The findings of defendant in error as to the net earnings of plaintiff in error for the twelve-month period end-
[fol. 15] ing August 1, 1929, as to the per centum of return earned during said period upon the value of property devoted by plaintiff in error to gas utility service within said city of Kenton, that an excessive rate of return was earned by plaintiff in error during such period, and that such net earnings and rate of return represent the average annual net earnings and rate of return for said rate period, and each of said findings, are arbitrary and erroneous and not based upon the evidence in said cause.

17. Defendant in error has erroneously found that the rates ordered in effect by its said final order will produce adequate revenues during said rate period to pay all operating expenses incurred by plaintiff in error in rendering

gas utility service within said city of Kenton and provide an annual return of at least 6% upon the value of the property devoted to such service as found by defendant in error in its said final valuation. The undisputed evidence in said cause clearly establishes that such conclusion is incorrect, and that said rates will not, if made applicable to any year for which they have been ordered in effect, leave plaintiff in error with sufficient revenues from such service to pay the operating expenses thereof and provide even such an inadequate return.

18. Defendant in error in entering its final order in said cause has ignored the evidence as to the effect of the present economic situation upon the revenues derived by plaintiff in error from gas utility service within the said city of Kenton, and the fact that even under existing rates plaintiff in error's revenues for the year 1931 were materially less, and its net earnings available for return were materially less, than the revenues and net earnings for the twelve-month period ending August 1, 1929; and defendant in error has arbitrarily denied the request made by plaintiff in error in its petition for rehearing, duly filed in said cause, for an opportunity to show the fact that both plain-
[fol. 16] tiff in error's revenues and net earnings from such service were substantially lower in 1932 than in 1931.

19. The finding of defendant in error as to the amount of revenue that would be derived by plaintiff in error during said rate period from gas utility service within said city of Kenton under the rates fixed by said final order, is erroneous, and is an amount greatly in excess of the actual revenues which would be derived by plaintiff in error if said rates are placed in effect for said rate period.

20. The finding of defendant in error that the rates provided for in its said final order will produce for plaintiff in error a minimum annual gross revenue of $70,828.95 is erroneous. Such rates produce a much lower gross revenue for the years 1930, 1931 and 1932 and for the current year. Under existing rates plaintiff in error's gross revenue from gas utility service in said city of Kenton was but $72,278.21 for the year 1931, and the rates fixed by defendant in error would reduce these revenues by approximately 15½%. The action of defendant in error in refusing plaintiff in error the rehearing duly prayed for and thereby pre-

cluding plaintiff in error from showing in the record the fact that its revenues from such service were, under the rates actually charged, but $66,743.09 for the year 1932, was arbitrary and unlawful and a denial to plaintiff in error of due process of law.

21. Defendant in error has exceeded the authority granted it by law by attempting in said cause to fix a rate to be charged by plaintiff in error for a period longer than the two-year period named in the ordinance of said city of Kenton appealed from, which period ended August 16, 1931.

22. The finding of defendant in error that under the rates now in effect, plaintiff in error secures an excessive amount of revenue from gas utility service within said city [fol. 17] of Kenton is erroneous and is not supported by the evidence in this cause.

23. The final order of defendant in error is erroneous in directing plaintiff in error to make to consumers of gas utility service rendered by plaintiff in error within said city of Kenton refunds equal to the difference between the respective sums paid by such consumers for such service rendered during said rate period and the amount which said respective consumers would have paid for such service if the rates fixed in said final order had been in effect during said rate period.

24. Said final order is not sustained by sufficient evidence and is contrary to law.

25. Said final order is against the weight of the evidence.

26. Defendant in error erred in denying plaintiff in error a rehearing in said cause.

27. Defendant in error has failed and refused to fix rates and determine the matters at issue in accordance with the principles established by the supreme court of the United States as applicable to such proceedings and as necessary to be followed if a denial of due process of law is to be avoided.

28. The action of defendant in error in arbitrarily placing in evidence, after the termination of hearings in said cause, the annual reports filed by plaintiff in error with defendant in error for the years 1928, 1929 and 1930, in

failing to include among the reports placed in evidence the annual reports of plaintiff in error for the years 1931 and 1932, and in refusing, when this fact was specifically called to its attention, to include said annual reports for 1931 and 1932 as part of the record in said cause, is arbitrary, illegal and unlawful.

Wherefore, plaintiff in error prays that defendant in error may be required to transmit forthwith to the clerk of this court a certified transcript of the journal entries, original papers or transcripts thereof, a certified transcript [fol. 18] of all evidence adduced upon the hearing before defendant in error in the proceedings complained of, all the exhibits introduced in evidence during said proceedings, and a certified transcript of all judgments, decisions and orders rendered by defendant in error in said proceedings; that the same may be filed in this court; that the said final judgment, finding and order made by defendant in error on March 10, 1933 in said cause shall be in all respects reversed, vacated, set aside and held for naught; and that defendant in error shall be ordered and directed by this honorable court to enter no judgment or order in said cause No. 5666 that reduces or changes the rates actually charged by plaintiff in error during the pendency of said cause; and that plaintiff in error may be restored to all things that it has lost by reason of the acts of defendant in error hereby complained of.

West Ohio Gas Company, an Ohio corporation, by Chas. C. Marshall, H. O. Bentley, Cooke, Sullivan & Ricks, its Attorneys.

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[fol. 19] IN SUPREME COURT OF OHIO

WEST OHIO GAS CO.

v.

PUBLIC UTILITIES COMMISSION OF OHIO (Two Cases.)

Public Utilities Commission—Administrative powers and discretion—Non-interference by courts—Commission may enter order nunc pro tunc, when—Determination of gas rate—Four-year time basis not disturbed, when—Refusal to reopen case, after final submission, not abuse

of discretion—Finding transmission line useful, not disturbed—Amortization ordered, but not consummated—Allocation system, adopted by Commission, not disturbed, when—Books of utility prima facie evidence of expenditures until integrity attacked—Burden on utility to support entries, when integrity attacked—Commission cannot manage utility or dictate its policies—Items considered most favorable to utility, and income rate lawful and reasonable—Net rate of 6 per cent not unlawful and unreasonable.

1. The Public Utilities Commission of Ohio has broad administrative powers and a wide extent of administrative discretion, with the exercise of which, upon sufficient evidence and within its statutory limits, the courts do not interfere: but the Commission, exercising a delegated regulatory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements. (Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S., 248; Columbus Gas & Fuel Co. v. Public Utilities Commission, and City of Columbus v. Public Utilities Commission, 127 Ohio St., 109, distinguished.)

2. Where no intervening rights have accrued, the Public Utilities Commission, in the exercise of its administrative discretion and in order to make its record speak the truth, may enter an order nunc pro tunc.

[fol. 20] 3. The time basis of four years, fixed by the Public Utilities Commission of Ohio in determining the rate to be made for a public utility, will not be disturbed, in the absence of proof that such basis was arbitrary.

4. The refusal to reopen a case after final submission, for the purpose of allowing a public utility to file and have considered its annual report for 1932, after the Public Utilities Commission had fixed the years 1928, 1929, 1930 and 1931, four average years, as its time basis, does not constitute an abuse of administrative discretion.

5. A finding made by the Public Utilities Commission, to the effect that a forty-four mile transmission line owned by a gas company is useful, will not be disturbed unless such finding is against the manifest weight of the evidence. And this is true despite the fact that the same Public Util-

ities Commission had previously made an order to amortize such transmission line, which had not been amortized.

6. An allocation system adopted by the Public Utilities Commission will not be disturbed in the absence of a showing that such system is unfair to the public utility.

7. The Public Utilities Commission must accept the books of a utility as being prima facie evidence of the expenditures contained therein, unless and until the integrity of the entries is attacked.

8. When the integrity of such entries is attacked, then the public utility carries the burden of supporting its entries by the greater weight of the evidence.

9. The Public Utilities Commission cannot assume to manage a public utility or dictate its policies.

10. When the items of rate-case expense, new business, excise tax, unaccounted for gas, donations and contributions are considered in their most favorable light to the public utility and, after such consideration, a rate of income that is not unlawful and unreasonable is fixed by the Public Utilities Commission for such public utility, such rate will not be disturbed.

11. A net rate of six per centum per annum, in the light of the times, is not unlawful and unreasonable.

(Nos. 24104 and 24105—Decided May 16, 1934.)

Error to the Public Utilities Commission

OPINION

The operative facts and governing principles of law being similar in these cases they were submitted together notwithstanding the West Ohio Gas Company and the Pub-[fol. 21] lic Utilities Commission filed separate briefs in case No. 24104.

The petitions in error are of such superlative amplitude as to preclude their being set out in haec verba, and we are content to set out the errors complained of in synoptical statement.

The parties will be referred to in the statement and in the opinion as the "Gas Company" and the "Commission."

Case No. 24104 involves the rate fixed for the city of Lima, and case No. 24105 involves the rate fixed for the city of Kenton, and in the matter of differentiation will be referred to as the "Lima" case and the "Kenton" case.

The Lima case will be given first consideration. This case is a bit novel in that it involves, as will be seen from the statement of fact, the fixing of a rate for the sale of mixed artificial and natural gas of low B. T. U. content.

The claim is made that residents of the city of Lima pay more for their gas per thousand cubic feet than any other city of Ohio. This is denied. Comparisons are made by way of proof and disproof. These comparisons add volume to the briefs, but are of little, if any, aid to the court.

The sole question before this court is whether or not the rate fixed by the commission is unreasonable and unlawful. The claim is likewise made that the rate fixed is confiscatory. With the claim of confiscation, as such, we are little concerned, as it must be conceded as a matter of law that if a rate is confiscatory it is both unreasonable and unlawful.

Long prior to 1924 natural gas for heating purposes was distributed in Lima by the Lima Natural Gas Company. At the same time the Lima Gas Light Company, an affiliated corporation, manufactured and sold in the city of Lima a gas for illuminating purposes. Each of these companies owned [fol. 22] a separate distributing system, and, in addition thereto, the Gas Light Company owned a plant where it manufactured an illuminating gas of a low B. T. U. content. The market for the sale of illuminating gas gradually ceased to exist, until finally the manufacturing plant and distributing system of the Gas Light Company became obsolete. In 1923 the two properties were combined, the Natural Gas Company securing permission from the Public Utilities Commission to furnish the city with a mixed fuel gas. By this method the physical plant of the Gas Light Company was added to the system of the Natural Gas Company, and the loss by obsolescence was avoided. These two combined systems, together with replacements and additions, constitute the gas properties now being operated in the city of Lima by the plaintiff in error Gas Company.

In addition to the distributing system and the manufacturing plant the Natural Gas Company owned forty-four miles of transmission line, extending east from the city of

Lima, which is also a part of the present property. It was during this period that the Insull interests of Chicago acquired the stock in the Lima companies, and also acquired the stock in other gas distributing companies in nearby towns. In 1924 these new owners organized the West Ohio Gas Company, plaintiff in error here, and caused the assets of these various distributing companies owned by them to be sold to this West Ohio Gas Company. The common stock of the West Ohio Gas Company was acquired by the Midland Utilities Company of Chicago, another Insull corporation, which in turn is owned by still another Insull company. It is claimed that the prices paid for the stocks of these various local companies were not available in this proceeding for the purpose of determining the orginal cost of property.

In December, 1924, on the occasion of the transfer of the assets to the West Ohio Gas Company, the Commission authorized the issuance of $3,376,000 of bonds and preferred [fol. 23] stock securities. This order was based upon previous appraisals, and not related to purchase price. Eight per cent preferred stock, an issue of $750,000, was sold to another Insull company at 87½. West Ohio Gas Company has no gas company affiliates in the state of Ohio, produces no natural gas, and is simply a distributing company in that regard. No cost records of the property prior to 1924 are available. This forty-four miles of transmission line, which is one of the major items in the valuation of property, is large enough to supply a population much larger than that of Lima with natural gas. Lima requirements being approximately 1,000,000 cubic feet per day, the artificial plant in Lima has a capacity sufficient to supply a population more than double that of Lima. These capacities of the transmission line and the artificial gas plant are in addition to their use in supplying other communities.

Because of the character and use of this property the Commission did not reduce the valuation of this plant, which admittedly has a capacity of practically two or three times the requirements of Lima; and the entire value of all this property was included in the valuation finding of the Commission, allocated, of course, as between Lima and the other communities. This artificial gas plant and transmission line constitute more than one-third of the entire valuation. This set-up has remained unchanged since 1924, when acquired by the Insulls.

Twenty years ago the predecessor of the Gas Company distributed in Lima natural gas having a B. T. U. content of between 1000 and 1100 at a retail price of 30¢ to 33¢. The producing company received 65 per cent of this price and the distributing company 35 per cent, or, in other words, the natural gas was distributed in Lima for less than 12¢.

In March, 1928, the Gas Company was receiving an average price of $1.29 for each thousand cubic feet of gas sold in [fol. 24] Lima. Under a contract with the Ohio Fuel Gas Company the West Ohio Gas Company is buying natural gas at 55¢ delivered to the gate at Lima. At the same time the Gas Company is manufacturing a low B. T. U. content gas for 20¢ per thousand in the artificial gas plant. These two products are mixed. The mixture contains 35 per cent natural gas and sixty-five per cent artificial gas, so that the total production cost of 1000 cubic feet of this mixed gas is approximately 32½¢.

The Gas Company contends that the B. T. U. content of this mixed gas is from 500 to 550, or approximately one-half of that contained in natural gas. There is evidence that the average is not over 475.

The attempt of the Gas Company to compare its rates with those prevailing where gas is supplied alone by an artificial gas plant is also unwarranted. Lima is being supplied with a diluted natural gas. This 32½¢ per thousand production cost represents the Gas Company's figures, but nevertheless to that the Commission added 3½¢ to cover incidental cost before distribution and leakage during distribution, making a total of 36¢ per thousand as the production cost. Subtracting this from the retail price of $1.29 claimed by the Gas Company leaves 93¢ for distribution and profit, a service which was performed twenty years ago for 12¢. The cost of gas in this period has increased about sixty per cent.

At all times during the period involved there has been an abundant supply of natural gas available. There are approximately 10,000 gas consumers in the city of Lima, and the city offered exhibits showing the annual income of the Gas Company, calculated on the ordinance rates applied to the volumes of gas sold by the Gas Company when actually sold, at a time when the Gas Company was charging rates almost 50 per cent higher than the ordinance rates. The tariffs on file at the Commission show that natural gas out of [fol. 25] this same transmission line is sold by the Ohio Fuel

Gas Company at Ada, Ohio, within twenty miles of Lima, at 65¢ per thousand.

It was the contention of the city of Lima before the Commission—and, through its counsel, it is again raised here—that, while a reasonable rate was desired, which would enable the utility to make a reasonable profit, thus assuring good service, the Gas Company had pursued a policy of continually increasing rates for the sake of immediate gain, in direct violation of the economic principle that the success of such a business depends largely upon increasing volume.

It was further contended on the part of counsel for the city of Lima that the people of Lima have been educated by the Gas Company and its prices to consider gas as a very expensive commodity, to such an extent that per capita consumption in that community is very low.

The Commission, after determining proper expenses allowable in the annual operation, used the volumes of gas actually sold by the Gas Company in setting up the rate structure at which it arrived in this case, without taking into consideration any possible increase in gas consumption upon the establishment of lower rates.

Subsequent to the filing of the petition in error herein, it came to the attention of the Commission that the sum of total expenses appearing on page 6 of the final order of the Commission, in the amount of $305,686.88, was an erroneous total of the individual items of expense as fixed by the Commission, the correct total being $301,920.92.

Numerous calculations appearing in this final order were made on the basis of this erroneous figure, so that the order did not correctly set forth the findings of the Commission as made. In order to correctly reflect its true findings, the Commission on May 19, 1933, issued a nunc pro tunc order dated March 10, 1933. The Gas Company asks [fol. 26] that this order nunc pro tunc be stricken from the record.

Prior to March, 1928, there was no gas rate ordinance in the city of Lima, the rates having been established by the Commission in 1925, followed by a slight voluntary reduction by the Gas Company commencing in 1926. On March 19, 1928, the city of Lima passed a rate ordinance for the period of five years from and after April 19, 1928. The rates prescribed in this ordinance were not accepted by the Gas Company, and it filed an appeal from such rates

to the Commission under Section 614-44 et seq., General Code.

Hearings were had from time to time before the Commission, and on September 15, 1931, a tentative valuation finding was made. Protests were filed, both by the city of Lima and the West Ohio Gas Company, and on January 27, 1932, the Commission issued its final valuation order fixing the value of the company property to be used as a rate base in the sum of $1,901,696.26. The Gas Company did not seek a review of this order and is not now attacking this valuation in this proceeding.

Thereafter further hearings were had before the Commission relative to revenues and expenses, for the purpose of determining reasonable rates. The case was finally submitted to the Commission on July 19, 1932, and was under consideration by it until March 11, 1933, when the final rate order herein complained of was issued. During the pendency of this proceeding the Gas Company elected, under the provisions of Section 614-44, et seq., General Code, to continue to charge the rates in effect at the time the ordinance was passed, and entered into bond conditioned and agreeing to refund to its customers the difference between the rates collected under bond and the rates ultimately fixed in this proceeding. The petition in error challenges the rates fixed by the Commission.

[fol. 27] The rates in effect at the time the ordinance was passed are as follows:

$1.25 for the first 400 cubic feet or less per month,
$1.05 per M c. f. for the next 9600 cubic feet,
$1.00 per M c. f. for the next 25,000 cubic feet,
.75 per M c. f. for all over 35,000 cubic feet.

The rates prescribed by ordinance were as follows:

90¢ for the first 1000 cubic feet,
80¢ per M c. f. for the next 3000 cubic feet,
75¢ per M c. f. for the next 6000 cubic feet,
55¢ per M c. f. for all over 10,000 cubic feet.

The Commission prescribed the following rates:

$1.00 for the first 400 cubic feet, or less, per month,
.95 per M c. f. for the next 9600 cubic feet,
.75 per M c. f. for all over 10,000 cubic feet per month.

The Gas Company urges numerous grounds for reversal, but they may be resolved substantially as follows:

1. Alleged error of the Commission in refusing to admit in evidence the 1932 annual report of the Gas Company tendered on the occasion of the filing of a motion for rehearing.

2. The contention is raised that the rates established by the Commission do not yield sufficient revenue to pay operating costs and afford a fair return on the valuation, and are therefore confiscatory and in contravention of the provisions of the Fourteenth Amendment of the Constitution of the United States, and also of the provisions of the Constitution of Ohio.

This latter and major contention of the Gas Company is based upon a number of alleged claims, viz:

(a) The rate of return on the valuation fixed by the Commission is inadequate.

(b) The Commission should have treated each annual period separately instead of establishing one rate for the entire period.

(c) The allowance by the Commission to the Gas Com- [fol. 28] pany for losses through unaccounted-for gas should have been 9 per cent. instead of 7 per cent.

(d) The Commission allowed for direct distribution expense $34,892 instead of the sum of $40,622 claimed by the Gas Company.

(e) The Commission allowed $800 less annually for commercial expenses than that claimed by the Gas Company.

(f) The Commission allowed $5000 annually as a reasonable expenditure for attaching new business, whereas the Gas Company claimed that this figure should be approximately $12,000.

(g) The Commission allowed for general and miscellaneous expense the sum of $44,713, which the Gas Company claims is wrong in three particulars: (1) That there was an error in mathematical calculation of the Commission; (2) that the Commission allowed nothing for rate case expense, and (3) the Commission in allocating this item used

a per customer basis whereas the Gas Company contended for a consumption basis allocation.

(h) The Commission allowed 1.4 per cent. of the depreciation property as a reasonable amount to set aside for depreciation reserve, whereas the Gas Company contended for 3 per cent.

(i) The Commission disallowed a claim made by the Gas Company for amortization of the forty-four mile transmission line in the amount of approximately $23,000 annually.

(j) The Gas Company claims the Commission did not take into consideration the 1 per cent. increase in the state excise tax which became effective April 5, 1932.

These are substantially all of the issues now raised before the court in this case.

Mr. Charles C. Marshall, Mr. Harry O. Bentley, Messrs. [fol. 29] Cooke, Sullivan & Ricks and Mr. Edmond W. Hebel, for plaintiff in error,

Mr. John W. Bricker, attorney general, Mr. Thomas J. Herbert and Mr. Donald C. Power, for Public Utilities Commission; Mr. Melvin C. Light and Mr. Elmer Ey Welty, for the city of Lima; Mr. Paul T. Mahon, Mr. L. B. Brown and Mr. John H. Pfeiffer, for the city of Kenton.

STEPHENSON, J.:

The Gas Company complains generally that the Commission, in its process of fixing the rate herein, has not followed the procedural requirements, and has thereby denied to it due process of law, and that the rate fixed by the Commission is unreasonable and unlawful.

We will consider the specific questions raised in the Lima case in inverse order.

The valuation fixed by the Commission on September 15, 1931, for property used and useful in the city of Lima, as of a date certain, to wit, March 31, 1928, the effective date of the rate ordinance passed by the city, was in the amount of $1,901,696. Protests against such valuation were filed by both the Gas Company and the city, but no review of this order was had, and this sum so fixed must be regarded as

a valuation binding upon the Gas Company and the city alike, and is the rate base.

The Gas Company complains that the Commission in fixing the rate did not take into consideration the one per cent. increase in the state excise tax, which became effective April 5, 1932.

Questions arise in every rate-making case, and arise in this case, as to the extent of authority of the Public Utilities Commission in fixing rates. Someone has said that whereas we formerly had but three branches of government, the executive, judicial and legislative, we now have four, in that we have grown an administrative branch. True, administrative boards are, in the main, fact finding bodies; [fol. 30] but without at least quasi-judicial power they could not justify their existence. We accept the ruling of Chief Justice Hughes as definitive of the powers of administrative bodies, as expressed in Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S. 248, 76 L. Ed. 273, 52 S. Ct. 146. In this case the Chief Justice was dealing with the powers of the Interstate Commerce Commission. He said:

"We are thus brought to the fundamental considerations governing the authority of the Commission. It has broad powers and a wide extent of administrative discretion, with the exercise of which, upon evidence, and within its statutory limits, the courts do not interfere. The important and salutary functions of the Commission to enforce public rights are not to be denied or impaired. But the Commission, exercising a delegated regulatory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements."

The opinion is not quoted in full, as the unquoted part is not pertinent in that it deals with the effect of the Hoch-Smith Resolution upon the powers of the Commission. While a federal administrative board, operating under federal laws, was being dealt with in this opinion, the general principles governing administrative bodies, whether federal or state, are much the same.

In following this rule we are fully cognizant of the seventh paragraph of the syllabus in the case of Columbus Gas & Fuel Co. v. Public Utilities Commission, and City of

Columbus v. Public Utilities Commission, 127 Ohio St. 109, 187 N. E. 7. As has been heretofore said, no question is raised in this case as to the valuation of the Gas Company's property.

As some of the questions presented herein in effect charge the Commission with an abuse of discretion, it was [fol. 31] deemed proper to announce the rule we would follow.

The one per cent increase in the excise tax is not given serious consideration by the Gas Company. Section [2294-4], General Code (114 Ohio Laws, pt. 2, 19, Section 4). This tax was effective only slightly more than a year under the ordinance passed by the city of Lima. Taking the gross revenue for 1931 as a basis, the amount would be somewhere between four and five thousand dollars, but such tax was not payable until 1932. The Commission took a four year basis, viz: 1928, 1929, 1930 and 1931. There is nothing in the record to show that this was an arbitrary basis. There were two fat years and two lean years considered. By considering these four years, an average rate was reached. The Commission barely "got under the wire" with its finding and order, as it was, its finding being announced about a month before the expiration of the ordinance period. The Gas Company, after the matter had been finally and fully submitted and the calculations made on a four year basis, and within a short time before the Commission made its finding and order, asked for a rehearing in which they could submit their 1932 report. To have considered the year 1932 would have required the Commission to revamp all the work it had done, and we do not think it abused its administrative discretion in refusing the application.

Did the Commission err in disallowing the claim of the Gas Company for the amortization of the forty-four mile transmission line in the approximate amount of $23,000 annually?

This court has heretofore held, in Columbus Gas & Fuel Co. v. Public Utilities Commission, and City of Columbus v. Public Utilities Commission, supra, that the Ohio legislative formula for arriving at a rate base contained no provision for amortization and that the Commission had no "vestige of discretion" to go beyond the statute. Our [fol. 32] statutes do provide for "Depreciation, if any,

* * * for existing mechanical deterioration, for age, for obsolescence, for lack of utility or for any other cause * * *." This is a provision of Section 499-9, General Code. It is a fair law, and under it no public utility is saddled with property that is affected with mechanical deterioration. This property phase is considered in determining a rate base. After the rate base has been determined, is it fair to permit the public utility to take out of its earnings an amount equal to the replacement value of the property in question? The Commission found that this transmission line was useful to the Gas Company, and in so finding it does not run counter to the manifest weight of the evidence, as there is evidence in the record to support it.

The Gas Company claims that the Commission is bound by a former order in which it made an allowance for the amortization of this pipe line. That is "water over the dam" and the Commission did not see fit to be further bound by it, nor was it required to be so bound. This order was made April 25, 1925, by the Commission, on the plea of natural gas shortage, which plea at that time had some foundation in fact, but the Gas Company did not set up the amortization for such purpose after allowance; but when hailed before the Commission in a rate proceeding it attempts to reassert such claim, when as a matter of fact there is no shortage of natural gas.

It appears from the record that the Gas Company bears all the maintenance expense of this line. It further appears that the entire value of the line allocable to Lima is included in the base of $1,901,696.26 fixed by the Commission as the value of the depreciable property on which the allowance of 1.4 per cent as an annual depreciation charge was computed. We fail to see wherein the Commission erred in this respect.

The Gas Company excepts to the allowance by the [fol. 33] Commission of 1.4 per cent. of the depreciable property as a reasonable amount for depreciation reserve. The Gas Company contends for 3 per cent.

We have little trouble with this proposition. This finding was made from seven years experience, 1925 to 1931, inclusive, as shown by the Gas Company's book value. The fact is that the Commission was more liberal in this regard than the book value warranted.

The Commission allowed for general and miscellaneous expense the sum of $44,713, which the Gas Company claims is wrong in four particulars, namely:

1. That there was an error in mathematical calculation;

2. That nothing was allowed for rate-case expense;

3. That the Commission used the per customer basis in allocating this item instead of a consumption basis;

4. That the Commission overlooked a substantial part of such expenses, as shown by its annual report.

The alleged errors in calculation were treated fairly by the Commission.

It must be conceded that the Gas Company is entitled to a fair and reasonable allowance for rate-case expense. The Gas Company claims an allowance of $33,542.63 for rate-case expense in these proceedings to May 1, 1932. The Commission is not obliged to accept the bald figures of the Gas Company without a showing that the figures are fair and reasonable. Spreading the amount claimed by the Gas Company over a period of six years, the length of time that this rate case was pending, and allowing, as contended by the Commission, the sum of $5,100 per year, rate fixed by the Commission would not be lowered. The Commission would have been warranted in ignoring this item of general and miscellaneous expense entirely in the absence of proof that the Gas Company's book figures represented an amount that was fair and reasonable. The Commission adopted the per customer plan in allocating general and miscellaneous expense to the city of Lima. The Commission [fol. 34] may, in the exercise of its administrative discretion, adopt a plan for the allocation of such item, and if the plan is fair to both the public utility and the consumer the court will not disturb it.

It is further claimed by the Gas Company that even in its allocation according to the per customer plan, the Commission erred in that it did not give consideration to 470 new customers in four small towns outside the city of Lima added "sometime" in 1931, and 1070 new customers in Delphos added at the end of that year.

An examination of the record develops the fact that the Commission on the per customer averages considered the

entire system of the Gas Company in the application of its plan, using the figures obtained from the annual reports as follows:

| | 1928 | 1929 | 1930 | 1931 | Average |
|---|---|---|---|---|---|
| Distribution Expense | $3.77 | $3.54 | $3.24 | $3.71 | $3.56 |
| Commercial Expense | 2.14 | 1.95 | 1.97 | 2.11 | 2.04 |
| New Business | .85 | 1.09 | 1.14 | 1.13 | 1.05 |
| Gen. and Misc. Expense | 3.40 | 4.02 | 2.85 | 3.49 | 3.44 |

We see nothing unfair in this method, and on readjustments we fail to see where the Gas Company was treated unfairly.

The Commission allowed the sum of $5,000 annually for attaching new business, whereas the Gas Company claims it should have been allowed approximately $12,000.

The Gas Company insists that before the Commission can reduce the amount of this item, as shown by its books, the Commission must show that such an amount is unfair and unreasonable.

Such a rule would completely tie the hands of any administrative body. When a public utility by rule of court is enabled to throw its books down in front of the Public [fol. 35] Utilities Commission of the State of Ohio and say to it, "You must accept the figures shown by these books unless and until you have proven them to be untrue," just then the keys to the Public Utilities Commission may as well be turned over to the public utilities. It would seem, in the contention for such a holding, that the consumer is lost sight of entirely.

It must be remembered that while public utilities are entitled to a fair and reasonable rate of income, based upon a fair and reasonable valuation of their properties, the consumer is at the same time entitled to their product at a fair and reasonable price, to be arrived at by the employment of fair and reasonable means.

The Public Utilities Commission is the arbiter between producer and consumer, and it has fulfilled the purpose of its creation when it treats both fairly.

The consumer is concerned with the continued existence of a producer who affords to him the product of a public utility at a price that is fair and reasonable. Incidentally, he should not, and, so far as the court knows, does not, ob-

ject to being indirectly assessed in a reasonable amount expended in good faith to assure that continued existence, but that does not mean that he is obliged to pay any amount that the producer sees fit to place on his books.

The Commission found from the testimony that the new business obtained by the Gas Company in Lima did not warrant the expenditure of $12,000 per year for new business—nor the half of it. Counsel have not pointed us to that part of the record showing that it has competition. In the absence of a showing of competition, which the Gas Company undoubtedly would have shown had it been the fact, the Commission had the right to assume that there was no competition, and the fact that there was no competition was a fact which it had a right to take into consideration in determining the amount it would allow. It not being shown that there [fol. 36] was competition, the case of Consolidated Gas Co. v. Newton, 267 Fed., 231, is not in point.

The effect of the holding in the cases of Brooklyn Borough Gas Co. v. Prendergast, 16 Fed. (2d), 615, Monroe Gaslight & Fuel Co. v. Michigan Public Utilities Co., 11 Fed. (2d), 319, and Citizens Gas Co. v. Public Service Comm. of Missouri, 8 Fed. (2d), 632, 634, is simply to criticize the different administrative bodies for assuming to manage the public utilities involved.

All these decisions are in jurisdictions outside of Ohio and involve a different statutory set-up, and, while we respect these decisions as emanating from the very ablest jurists, we do not feel bound by them unless they are attuned to our statutory law.

It is a matter of common sense, as well as law, that the members of the Public Utilities Commission of Ohio cannot substitute themselves as managers of the Gas Company, or dictate its policies, and in their finding they expressly disclaim any such intention. Of course such disclaimer would amount to nothing if their action was so grossly arbitrary as to indicate to an unbiased mind that they were assuming to manage the Gas Company and dictate its policies.

The case of Ohio Utilities Co. v. Public Utilities Commission, 267 U. S., 359, 69 L. Ed., 656, 45 S. Ct., 259, is cited by counsel as bearing upon several questions involved in this case. It is insisted that this case has particular application to this item of new business. This is an Ohio case, and we

follow it without hesitation. We quote the syllabus in full, as reported in 69 Law Ed.:

"1. Reproduction value of the property of a public utility for rate-making purposes is not a matter of outlay, but of estimate; and should include a reasonable allowance for organization and other overhead charges that necessarily would be incurred in reproducing the utility.

[fol. 37] "2. An item of interest included in the engineer's estimate of the reproduction value of a public utility, based on an estimate of the time necessary for construction, and allowance of interest on the estimated cost for one half that time, cannot be reduced by the commission without justification.

"3. In the absence of evidence to the contrary, the commission cannot arbitrarily reduce the estimate of its own engineers as to the necessary working capital of a public utility for rate-making purposes.

"4. Limiting a public utility to a return of less than 5 per cent upon the value of its property unconstitutionally deprives it of its property without due process of law."

It is well to remember that this decision was rendered by the Supreme Court of the United States at its October Term, 1924.

This case does not directly touch the question of allowance for new business, and we may say in passing that no case is cited wherein the question as it arises in this case is treated. The case last referred to simply makes plain the rule that the Commission cannot act arbitrarily.

The case of Consolidated Gas Co. v. Newton, supra, is the nearest case in point. We quote the syllabus and part of the dictum, viz:

"The cost of a department of a gas company for the promotion of the sale of gas, and gas using machines and appliances *held* a legitimate item of the expense of distribution."

At page 353, under the head of "Distribution Expenses," sub-head "Promotion Expense for Gas Appliances and Gas Utilization," the court says:

"These items include the cost of maintaining these departments which the company organized some years ago to push the sale of gas and of machines to burn gas. Their propriety is challenged largely because the sales have not increased much. The truth appears to be that the con-
[fol. 38] stantly increasing use of electricity for illumination has driven out gas more and more, until to hold its sales plaintiff must promote the use of gas for heating and cooking * * *. Advertisement, when not pushed to the useless extreme which competition too often engenders, is a necessary function. In its proper sense it means, not the creation of a factitious demand by the familiar process of repeated suggestion, but genuine information in such form as to reach the public."

In this field a reasonable price for gas was charged. There was competition. The company maintained and had been maintaining for some years a separate department for the exercise of this function. We have no such state of facts in this case. The Lima field is small. There is no competition. The price charged for a mixed gas of low B. T. U. content is almost prohibitive. All these facts were known to the Commission, and it refused to accept the figures produced by the Gas Company without some further proof as to their legitimacy.

Under all the facts and circumstances, we find no prejudicial error in the action of the Commission in this regard.

The difference in the amount of allowances for commercial expenses and distribution expense made by the Commission, and that claimed by the Gas Company, was brought about by the per customer method of allocation, which we have hereinbefore found to be fair. The Gas Company claims that it loses 9 per cent of all the gas it sells. The Commission went into the integrity of this claim, and made a finding that the Gas Company has considerably more mains and lines than is necessary to supply the city of Lima, and allowed 7 per cent., stating:

"This reduction of 2 per cent. in leakage is reflected in a corresponding reduction in the cost of gas sold which appears in the operating statistics * * *."

[fol. 39] The Gas Company contends that this finding of the Commission violates the case of Brooklyn Union Gas Co. v. Prendergast, 7 Fed. (2d), 628.

We find that the twenty-first paragraph of the syllabus in that case announces a general rule, viz:

"Unaccounted for gas, due to leakage, condensation, expansion, contraction, etc., should be allowed for on basis of experience of the company, and not at an arbitrary figure."

No fault can be found with this rule, where the integrity of the item is not attacked.

We further find, sixteenth paragraph of the syllabus, that the court may consider the testimony of the gas company's experts in the light of cross-examination.

That any gas company should lose almost one-tenth of its product by leakage, condensation, expansion, contraction, etc., is so unreasonable on its face as to warrant investigation. From the record in this case, we find that the allowance of 7 per cent. is fair and reasonable.

The Gas Company claims that anything less than 8 per cent. net income is confiscatory in its case, for the reason that its capital obtained from sale of bonds costs it 7.07 per cent. and from sale of preferred stock 8 per cent.

Just how far can a public utility be encouraged in paying a high price for its money?

It appeals to this court that any concern that loses almost ten per cent. of its out-put, and at the same time pays almost eight per cent. for its money, is headed for the rocks.

We are not denying a reasonable amount for financing. In just one Ohio case do we find where an allowance was made for money paid for the use of money, and that was the case of Ohio Utilities Co. v. Public Utilities Commission, supra, wherein the court held that in arriving at reproduction value an item of interest included in the engi- [fol. 40] neer's estimate, based on an estimated length of time necessary for construction and on allowance of interest (6 per cent.) on the estimated cost for one-half of that time, cannot be reduced by the Commission without justification.

This as a matter of fact was an allowance of 3 per cent. for full time.

After reconciling arithmetical errors and considering discrepancies, the Commission arrived at an average net rate of about 6 per cent. per annum. While there are some irregularities in some of the findings and rulings of the

Commission, they are not of such character as to warrant a disturbance of their order.

We come now to the consideration of the Kenton case, No. 24105.

This case will be treated briefly, as practically all the questions raised in this case were passed on in the Lima case, No. 24104. It was on this account that they were submitted together.

On July 16, 192 , the city council of Kenton passed an ordinance fixing the rates to be charged by the Gas Company within the city of Kenton for a period of two years from and after August 16, 1929. The Gas Company electing to collect the rates in effect prior to the passage of the ordinance, pending the appeal, gave bond to guarantee repayment of any excess rates that might finally be determined to have been collected by it.

The West Ohio Gas Company purchased natural gas from the Ohio Fuel Gas Company under a contract calling for a purchase price of 55 cents per M c. f. This gas is then distributed to consumers in the city of Kenton.

The Commission fixed the sum of $189,844.81 as the value of the Gas Company's property to be used as a rate base for the two year period of the ordinance, as of a date certain, to wit, August 1, 1929. This valuation cannot now be [fol. 41] disturbed, nor can the gate rate of 55 cents be departed from.

On March 10, 1933, the Commission found that the rates fixed by the Kenton ordinance were insufficient, unjust and unreasonable, and it fixed the rates to be charged in the city of Kenton during the ordinance period as follows:

| | |
|---|---|
| "400 cubic feet of gas or less used per month | $1.00 |
| "Next 2600 cubic feet used per month | 95¢ per thousand cubic feet |
| "Next 3500 cubic feet used per month | 85¢ per thousand cubic feet |
| "Next 3500 cubic feet used per month | 80¢ per thousand cubic feet |
| "Over 10,000 cubic feet used per month | 75¢ per thousand cubic feet |
| "House Heating as defined by Co.'s schedule on file | 60¢ per thousand cubic feet." |

The Commission thereupon ordered the Gas Company to refund, as per the previous arrangement.

It is estimated that the amount to be refunded during the ordinance period will approximate $40,000.

On March 18, 1933, the Gas Company filed its application for rehearing with the Commission, in which application it set out many alleged errors and irregularities which it claimed rendered the Commission's order unlawful. In such application it asked leave to be permitted to show the facts as to its decreased revenues and its net earnings from the service in Kenton for the year 1932 and the current year. On March 22, 1933, the Commission denied the application for rehearing, and on April 1, 1933, the Gas Company filed its petition in error in this court, praying that the proceedings of the Commission herein be reviewed and reversed.

The period used by the Commission for its computations [fol. 42] was the twelve month period ending August 1, 1929.

The same question of unaccounted for gas arises in this case, the Gas Company claiming 10 per cent and the Commission allowing 5 per cent.

The Gas Company claimed an allowance for General and Miscellaneous Expense in the sum of $10,979.63. The Commission allowed the sum of $6,556.26. It is noted, however, that the sum of $2,069.00 should have been and was added to this sum allowed by the Commission to cure an error made by the Commission in omitting certain expenses.

This difference was occasioned by the difference in the methods of allocation used and the refusal of the Commission to allow the claim for rate case expense.

For depreciation the same claim was made as in the Lima case.

The Gas Company claims an allowance for Excise Tax $1,226.31. The Commission allowed the sum of $1,144.62, there being a difference of $81.69. This difference is so small as to be of no consequence.

No authority is cited to support this allowance, nor has authority been cited to warrant disallowance. The allowance has been made and we will not disturb it one way or another.

The Gas Company claimed an Income Tax Allowance of $1,809.00. The Commission allowed the sum of $1,751.62; a difference of $57.38.

The total difference between the Gas Company and the Commission on all items amounted to $8,978.42.

On the basis of this difference in operating expense, using the valuation fixed by the Commission, the Commission found that the Gas Company's rate of income was altogether too liberal when the consumer was given consideration.

We have examined the Gas Company's reports and the Commission's tabulations, and we fail to see wherein the Commission has committed grievous error.

[fol. 43] The Commission found the gross revenues of the Gas Company from gas service in Kenton for the year ending August 11, 1929, to be $84,787.36. Total expenses for such time, deduct $61,497.10. Leaving a net income of $23,290.26. Divided by $189,844.81 produces 12.27 per cent net income.

The Commission fixed 6 per cent as a fair net income. Six per cent of $189,844.81 produced in dollars $11,391, and fixed a rate calculated to scale the net income from 12.27 per cent to 6 per cent, and in the light of the times this is not error.

We do not find the rates fixed in either of these cases to be unreasonable or unlawful, and the orders of the Public Utilities Commission of Ohio made in each and both cases are hereby affirmed.

Orders affirmed.

Weygandt, C. J., Matthias, Bevis and Zimmerman, JJ., concur.

Wilkin, J., not participating.

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[fol. 44] Clerk's Certificate to foregoing paper omitted in printing.

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[fol. 44a] [File endorsement omitted.]

[fol. 45] SUPREME COURT OF OHIO

[Title omitted]

PETITION FOR REHEARING—Filed May 29, 1934

West Ohio Gas Company, plaintiff in error, asks the court to grant a rehearing in the above entitled cause.

It is respectfully submitted, that in reaching its decision the court has misapprehended the effect of controlling evidence upon the questions involved and has overlooked important issues that are directly presented by the petition in error.

We shall not, of course, reargue this case in this petition for rehearing. We shall merely outline briefly several of the principal things which we believe the court has overlooked or misapprehended. Any one of these, we submit, is sufficient to necessitate the granting of the rehearing prayed for, and to require the reversal of the court's decision. By limiting our petition for rehearing to a pointing out of such principal errors, we do not, however, intend to waive any right we have, either upon a rehearing or in any further appeal of this cause, to discuss not only the points here referred to but also all the other features of [fol. 46] the present ruling that we deem untenable. It is our view that the court should have found for the plaintiff in error upon each and every error assigned in the petition in error filed in this case, that the court erred in not so ruling and that upon a rehearing in this case each and all such assignments of error should be decided in favor of plaintiff in error.

## I

## The Court Has Overlooked the Fact That the Refusal of the Commission to Consider the Evidence as to Net Earnings Subsequent to August 1, 1929, Was Not Only Arbitrary But Is Shown by Undisputed Evidence to Have Resulted in the Confiscation of the Company's Property if the Rate Order Is Sustained

We shall discuss first a factual situation that the court has overlooked but which clearly requires a reversal of the commission rate order.

The rates to be fixed in this case were for service rendered subsequent to August 1, 1929.

The commission had before it uncontradicted evidence showing the actual cost of rendering gas utility service in Kenton for the years 1929, 1930 and 1931. It ignored that evidence and considered only information as to a twelve-month period prior to August 1, 1929. This was done in the face of the fact that the unchallenged evidence establish*ing* that revenues from Kenton service for 1930 were

$4,430.10 below those for the period the commission considered; and that such revenues for 1931 were $12,509.15 below those for said period ending August 1, 1929; and that net earnings for 1930 and 1931 were $1,666.23 and $3,462.77, respectively, below net earnings for said period [fol. 47] ending August 1, 1929. As a result of these facts, the rate fixed by the commission, if it had in fact been sufficient to have produced the 6% return that the commission order said it would produce for the twelve months ending August 1, 1929, would nevertheless have produced a much lower return in 1930, and a still lower return in 1931.

There is a further fact that makes the return even more confiscatory. Errors in calculation by the commission accountants necessitated an admitted increase by $2,069 in the amount of expenses taken into account by the commission (Deft. Supp. Reply Bf., p. 33). This reduced by a like sum, or to approximately $9,300, the net earnings that, according to the commission's initial calculations, would be earned for the twelve-month period ending August 1, 1929 under the rates ordered in effect, and would give the company a 6% return on the rate base. As a result, the earnings for that period under the commission rates would be but about 4.9% on the rate base instead of 6%. For 1930 and 1931, the rate of return under the commission rates, even after disregarding the $9,000 of expenses that were disregarded by the commission, would be substantially below 4.9%.

The reductions in net earnings for the years 1930 and 1931 are facts shown by uncontroverted evidence. The effect of the commission rate order is a mere matter of calculation from such undeniable facts. It was facts such as these that led the then assistant attorney general to admit, when the case was first argued, that the order had to be set aside and the case remanded to the commission for revision of the order.

The court appears to have failed entirely to grasp the effect of the evidence as to net earnings; or to have perceived that the arbitrary action of the commission in clos- [fol. 48] ing its eyes to the evidence as to the results of operations during the very years for which it was fixing rates, did result in a rate order that indisputably confiscates the company's property devoted to Kenton service.

There is no basis on which any vestige of support for the order in this case can be founded. We submit that the

court has no other course than to reconsider its decision, and nullify the commission order.

## II.

### The Court Has Overlooked the Fact That the Action of the Commission Cannot Be Supported by Reliance Upon Reports or Other Documents Not Properly Introduced in Evidence

One of the important assignments of error which the company presented in its petition in error was that there had been a denial of due process of law to the company through the action of the commission in placing in evidence, after the termination of hearings in the cause, the annual reports of the company for the years 1928, 1929 and 1930, and then refusing the company any opportunity to meet any issues that might be created through the use of the reports, or to submit the reports for the two subsequent years. (Assignment of Error No. 28.) The record shows that the reports were ordered in evidence by the commission long after the hearings closed. This was done by an order dated three days before the rate order was entered, but not served on the company until after the rate order had been served on it. The record further discloses that the company made timely objection to this arbitrary and unlawful procedure, but that the commission refused the [fol. 49] company an opportunity to explain, clarify or show the make-up of the figures and information in the reports which the commission attempted to use for its basis for ignoring thousands of dollars of operating expense. The figures and information were misused and misapplied. Such misapplication is the sole basis of any support for the elimination of a substantial part of the actual operating expenses that have been disregarded by the commission. Yet the company never had an opportunity to show the facts, or to make the data complete by the inclusion in the evidence of the 1931 and 1932 reports.

This assignment of error was urged by us in our brief in this case. (Pltf. Orig. Bf. pp. 96-100.) The decision shows that the court overlooked the issue and has considered these reports as competent evidence in the cause. In fact, on page 28 of its opinion, the court states "We have examined the Gas Company's reports and the Commission's

tabulations, and we fail to see wherein the commission has committed grievous error." We assume the statement quoted is applicable to this case as well as the Lima case.

The law is clear that under the circumstances as above outlined, the reports are not properly in evidence and any attempted use thereof is a denial of due process, rendering the order void. We again call the court's attention to the decisions supporting this principle which we cited and quoted from in our briefs.

United States v. Abilene & Southern Railway Company, 265 U. S. 274 (1924);
Interstate Commerce Commission v. Louisville and Nashville Railroad Company, 227 U. S. 88 (1913);
Crowell v. Benson, 285 U. S. 22 (1932);
The Chicago Junction Case, 264 U. S. 258 (1924);
[fol. 50] Northern Pacific Railway v. Department of Public Works, 268 U. S. 39, 44-5 (1925);
Washington ex rel. Oregon R. R. & N. Co. v. Fairchild, 224 U. S. 510, 524-5 (1912);
Ohio Utilities Company v. Public Utilities Commission, 267 U. S. 359 (1925).

We quote a short excerpt from United States v. Abilene & Southern Railway Company, supra. As we stated in our reply brief that case is particularly significant here because of the action in this case of the commission in reference to the annual reports of the company. Mr. Justice Brandeis, in holding a legislative order void because of failure to observe the principle heretofore discussed, there said for a unanimous court, pages 286-290:

"The plaintiffs contend that the order is void because it rests upon evidence not legally before the Commission. It is conceded that the finding rests, in part, upon data taken from the annual reports filed with the Commission by the plaintiff carriers pursuant to law; that these reports were not formally put in evidence; that the parts containing the data relied upon were not put in evidence through excerpts; that attention was not otherwise specifically called to them; and that objection to the use of the reports, under these circumstances, was seasonably made by the carriers and was insisted upon. * * *

"* * * a finding without evidence is beyond the power of the Commission. Papers in the Commission's files are

not always evidence in a case. New England Divisions Case, 261 U. S., 184, 198, note 19. Nothing can be treated as evidence which is not introduced as such. Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, 91, 93; Chicago Junction Case, 264 U. S. 258.

* * *

"* * * The objection to the use of the data contained in the annual reports is not lack of authenticity or untrust- [fol. 51] worthiness. It is that the carriers were left without notice of the evidence with which they were, in fact, confronted, as later disclosed by the finding made. The requirement that in an adversary proceeding specific reference be made, is essential to the preservation of the substantial rights of the parties.

"* * * The matter improperly treated as evidence may have been an important factor in the conclusions reached by the Commission. The order must, therefore, be held void."

We respectfully submit that a proper determination of this issue alone will require a reversal of the commission rate order involved in this cause.

## III

### The Court Has Not Passed Upon the Question Presented as to Whether the Commission Order, if Valid, Can Be Made to Affect Rates for Any Period Beyond That Designated in the Ordinance Appealed from

Another error assigned by the company was the action of the commission in making any rate order in this case which affected the existing rates of this company for a period longer than the two-year period fixed in the rate ordinance of the city of Kenton appealed from. (Assignment of Error No. 21.) We argued this point at length in our initial brief, pages 93 to 96. Its determination is essential in this case, for, although the ordinance by its terms expired on or about August 16, 1931, the commission order expressly directs that the rate ordered in effect by that body and here appealed from should be effective until February 16, 1933.

The court has apparently failed to decide this issue because it had a mistaken idea as to the terms of the commis-

sion order. This error undoubtedly arose through the [fol. 52] court's reliance on the statements of fact contained in the supplemental brief filed by counsel for the commission, for in the court's opinion there are the same misstatements of the actual situation that are found in that brief. On page 25 of its opinion the court says:

"The Commission fixed the sum of $189,844.41 as the value of the Gas Company's property to be used as a rate base for the two-year period of the ordinance, * * *."

and on the same page it is stated that in the final order the commission "fixed the rates to be charged in the city of Kenton during the ordinance period * * *."

The commission error is, we submit, one that must be passed upon in disposing of this case, and we respectfully urge the court for a reconsideration of the case and a determination of this issue.

## IV

### The Record in This Case Does Not Support or Justify in Any Way Whatsoever the Action of the Commission in Disregarding Actual Operating Costs of the Company

The decision of the court seems to be predicated upon the belief that there was sufficient evidence to justify the commission in disregarding for rate case purposes a substantial portion of actual operating costs of rendering service; that upon disregarding such operating expense the rates fixed by the commission would permit a return upon the rate base fixed by the commission of approximately 6% for the twelve-month period ending August 1, 1929; that such a rate of return would be non-confiscatory of the company's property; and that although the ordinance did not [fol. 53] become effective until sometime in August, 1929, the commission was justified in paying no attention to the evidence as to actual revenues, expenses and net return for the period subsequent to August 1, 1929. We respectfully submit that each of these conclusions is untenable and that in arriving at each such conclusion the court has either overlooked or misapprehended controlling facts shown by the record in the case, and as a result has approved commission action which is not supported by evidence.

We have already pointed out to the court, under Point I, that the commission's finding that the rates fixed by it would yield 6% was predicated upon calculations now admitted by counsel for the commission to be erroneous. We have there shown that when these miscalculations are corrected, the rates fixed by the commission would have yielded less than 5% upon the rate base for the twelve-month period considered, even after disregarding operating costs to the extent they were disregarded by the commission; and that earnings for subsequent years would have been far less.

We desire now to call the court's attention to the fact that there is no foundation in the record to support the eliminations of operating costs that were made by the commission. For the twelve-month period considered, the commission arbitrarily cut the actual operating expenses approximately $9,000, which was about 13% of the entire cost of rendering the service. In so doing the court has lost sight of the fact that there is no evidence in this case attacking the actual costs of operation as put in evidence by the company. Company's Exhibit 102 and testimony by Mr. Pringle, the company comptroller, in support thereof, showed these expenses in detail. (Evidence, pp. 156-173.) Neither the commission nor the city introduced any evi- [fol. 54] dence as to revenues derived from, operating expenses incurred in, or net earnings from, Kenton service. The court will find nothing in the cross-examination of Mr. Pringle upon which to predicate the disallowance of the operating costs shown.

This evidentiary situation the court must have overlooked. In the light of uncontradicted evidence, the court's action in sustaining the Kenton rate order is out of harmony with the principle of law which is set forth in the seventh syllabus to the court's opinion, namely:

"7. The Public Utilities Commission must accept the books of a utility as being prima facie evidence of the expenditures, contained therein, unless and until the integrity of the entries is attacked."

When the record in this case is examined, it must be apparent that the eighth syllabus even if it were a correct statement of a principle of law, could have no application in this case. We shall not, therefore, extend this petition

for rehearing by discussing separately the various items of expense that the commission has disregarded.

Before passing this point we do, however, desire to call the court's attention to the fact that, if the allocation methods for distribution and commercial expenses used by the commission in the Lima case are upheld, the expenses for Kenton service must be increased over those shown by the company. The necessity for this is plain. The commission, by disregarding the fact that distribution and commercial costs are direct costs that permit of no apportionment and by applying an allocation formula to them, succeeded in reducing substantially the amount of such costs in the Lima service. A fortiori, those costs taken out of the Lima service costs by the apportionment method used, must be apportioned to the distribution and commercial costs applicable to other communities served. But in fixing a rate [fol. 55] for Kenton, the commission abandoned its "customer average" method of allocation applied in the Lima case. As a result, it took such amounts of operating expenses out of the Lima expenses, and did not include them in expenses for the other communities. It is self-evident that even in a proper case for allocation, any allocation made must be an equitable and not an arbitrary one, must be "related to realities," and must be applied throughout the entire property.

See:

Columbus Gas and Fuel Company v. Public Utilities Commission of Ohio (decided by United States supreme court, May 21, 1934).

We respectfully urge that the points hereinabove briefly outlined show the necessity of a rehearing of this case, and a reversal of the decision herein.

## V

## The Court Has Not Afforded the Company That Independent Judicial Review of the Facts Which Due Process Requires

The fourteenth amendment of the federal constitution requires the court, in reviewing a rate order made by an administrative body, to make an independent review of both the law and the facts and to reach an independent judgment based on such review.

This principle was succinctly expressed in Ohio Valley Water Company v. Ben Avon Borough, 253 U. S. 287 (1920), where the court said, p. 289:

"In all such cases," (rate fixing orders) "if the owner claims confiscation of his property will result, the State must provide a fair opportunity for submitting that issue [fol. 56] to a judicial tribunal *for determination upon its own independent judgment as to both law and facts;* otherwise the order is void because in conflict with the due process clause, Fourteenth Amendment."

The rule has since been reiterated and consistently applied by that court.

Bluefield Company v. Public Service Commission, 262 U. S. 679 (1923);
Prendergast v. New York Telephone Company, 262 U. S. 43, 50 (1923);
Lehigh Valley R. R. v. Commissioners, 278 U. S. 24, 36 (1928);
United Railways & Electric Company of Baltimore v. West, et al., 280 U. S. 234, 251 (1930);
Crowell v. Benson, 285 U. S. 22, 60 (1932).

We think it is clear from the opinion that such an independent review and determination of the facts was not made by the court in this case, and we respectfully submit that this constitutional guaranty has not been complied with. For this reason, there should be a reconsideration of this case.

## VI

## In Upholding the Refusal of the Commission to Permit the Company to Show the Results of 1932 Operations, the Court Has Overlooked the Requisites of Due Process in Rate Regulation

On pages 13 and 14 of its opinion the court justifies the refusal of the commission to allow the company to show the effect of 1932 operations upon the ground:

"To have considered the year 1932 would have required the Commission to re-vamp all the work it had done, and we do not think it abused its administrative discretion in refusing the application."

[fol. 57] In this ruling the court has overlooked controlling legal principles. Even if there had been any prospect that the rehearing requested might have been long, it would not have justified the commission in denying the rehearing when the same was required by essential demands of justice.

> Atchison, Topeka & Santa Fe Railway Company v. United States, 284 U. S. 248 (1932).

If the commission rate order is to extend beyond the two-year ordinance period, the essential demands of justice do necessitate that the company be permitted to show the 1932 operating situation.

By petition for rehearing filed within eight days after the entry date of the rate order, the company asked leave to show the results of its operation for the year 1932 which results were not available when the hearings in this cause ended. The making of such a showing becomes essential because of the nature of the commission order and the commission's action in refusing to take into account the fact, which the record discloses, that earnings had been greatly diminished under the existing economic situation. The petition for rehearing set forth the fact that the business of the company had been further adversely affected by such economic conditions, and that the company would show that its earnings for the year were far below those for the twelve-month period considered by the commission.

As a result of this petition it became the legal duty of the commission to receive the evidence. It must be apparent that when the figures were before the commission the work of revising its averages would not have been an extended task. And the recognition by the court that revision would have been required must also be a recognition that [fol. 58] the rates already fixed could not have been constitutionally extended to 1932 operations if the facts as to earnings for that year were established.

We submit that if the commission rate order is to be effective subsequent to the two-year ordinance period, then the court has erred on this phase of the case and that it should re-examine this issue.

## VII

### The Court Has Failed to See That the Data in the Record Proves That Under the Commission Rate Order the Company Would Not Have Earned on the Rate Base a Return Even Approaching 6%; and That to Limit the Return to Even 6% Would Be Confiscation

In its findings that the rate of return which the company would receive under the rates fixed by the commission would average about six per centum per annum on the rate base fixed by the commission, and that such a rate of return would be a non-confiscatory one, the court has lost sight of what the record shows, of the effect of errors in calculations by the commission accountants, and of the principles of law governing the return necessary to be allowed if confiscation is to be avoided. We shall present in outline form a summation of certain important factors that must have been overlooked.

1. When errors in calculations made by the commission accountants are corrected, the annual earnings of the company from Kenton service would, under the rates approved, be substantially below 5% for each of the years 1930 and 1931, even after the operating expenses for each such year have been reduced by the $9,000 reduction made by the commission. (See Point I, supra.)

[fol. 59] 2. The net earnings for the twelve-month period ending August 1, 1929, is not a measure for the years 1930, 1931 and 1932 and subsequently. Such fact is plainly demonstrated by the record.

3. This controversy involves the fixing of rates for the years that have passed. The question as to what rate of return was necessary to avoid confiscation must be determined for each such past year in the light of then existing conditions, and cannot for such years be based upon a determination of what might or might not be a non-confiscatory return for the present time. The determination of what may be an adequate return for today does not determine the question of the return which the company was entitled to earn during such years as 1929, 1930 or even 1931.

Smith v. Illinois Bell Telephone Company, 282 U. S. 133 (1930).

Lindheimer v. Illinois Bell Telephone Company, 54 Sup. Ct. R. 658 (1934).

This important and controlling fact the court has obviously overlooked.

4. An adequate rate of return must be determined from all the facts and circumstances shown in the particular case. The rate of return that must be allowed to avoid confiscation in the case at bar must be a substantially higher one than the return necessary in the case of a financially strong company, such as, for example, the Illinois Bell Telephone Company, and many of the other utilities that have recently presented rate controversies to the courts.

In view of the facts that only about three years before the rate case was commenced the West Ohio Gas Company was organized, and that its bonds and preferred stocks [fol. 60] were then marketed under authorization of and at prices fixed by the commission, it is apparent that the amount demanded by the public before it would invest money in the enterprise is a fair measure of the rate that must be paid to attract capital to this enterprise, and that the annual return required in order to avoid confiscation must be something higher than the 7.07% which the capital that it has obtained through the sale of senior securities has cost the company.

McCardle v. Indianapolis Water Company, 272 U. S. 400, 419 (1926).

United Railways & Electric Company of Baltimore v. West, et al., 280 U. S. 234, 251-2 (1930).

Bluefield Company v. Public Service Commission, 262 U. S. 679, 693-5 (1923).

The court has obviously been confused in dealing with the matter of rate of return, as appears from its reliance on, and discussion on pages 23 and 24 of its opinion of, the case of Ohio Utilities Company v. Public Utilities Commission, 267 U. S. 359 (1925). The portion of the case there referred to by the court does not touch the subject of rate of return, but considers the question of an adequate allowance for the undistributed overhead item of "interest during construction" to be taken into account in estimating the cost to reproduce the property.

We respectfully submit that when the factors and legal principles above outlined are considered, it becomes apparent that the rate fixed by the commission and approved by this court in its decision was clearly confiscatory during

each and every year for which it has been ordered to be made effective.

[fol. 61] Conclusion

We trust that the court will give this petition for rehearing most careful consideration. We submit that it shows clearly that controlling facts have been overlooked, or their effect has been lost sight of. We further submit that it shows that the order of the commission in this case must be set aside.

We respectfully urge that the petition for rehearing be granted, that the court give further consideration to the facts established and the legal principles involved, and that it thereafter find that the rate order of the commission appealed from in this case would confiscate the company's property, and cannot be sustained.

Respectfully submitted, Charles C. Marshall, Harry O. Bentley, Cooke, Sullivan & Ricks, Attorneys for Plaintiff in Error. Edmond W. Hebel, of Counsel.

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[fol. 62] In Supreme Court of Ohio

No. 24105

Title

West Ohio Gas Company, a Corporation Organized and Existing Under the Laws of the State of Ohio,

vs.

The Public Utilities Commission of Ohio (City of Kenton)

Action: Error to the Public Utilities Commission of Ohio.

Attorneys: for plaintiff in error, Marshall & Guild, Columbus; H. O. Bentley, Lima; Cooke, Sullivan & Ricks, Chicago, Ill.; for defendant in error, John W. Bricker, Attorney General; Donald C. Power, successor to T. J. Herbert, Columbus; Paul T. Mahon, L. B. Brown, John H. Pfieffer, Kenton, Ohio.

Memoranda of Pleadings, etc., Filed; Writs Issued, Judgments, Orders and Decrees

1933

April 1. Petition in Error (1) filed. Waiver of summons and entity of appearance filed.

April 1. Statement of interested parties filed.

April 1. Application for stay of execution filed. Notice and proof of service filed.

April 7. Order allowing stay of execution upon giving an undertaking in amount of $100.00 to approval of Clerk of this Court or cash deposit and further condition of said stay that plaintiff in error impound all moneys collected on and after April 9, 1933, until sum of $3000 has been so impounded and deposited. Carl V. Weygandt, Chief Justice, Journal 33, page 151.

April 8. Cashier's check No. 12406 Ohio National Bank, Citizen's Office in sum of $100.00 deposited by West Ohio Gas Company as per entry 5-7-33 in lieu of $100.00 bond. Seba H. Miller, Clerk. Held in safe, drawer 6.

April 26. Complete file from P. U. C. O. filed.

May 1. Plaintiff's printed brief and affidavit of service filed. 5-2-33 proof of service filed.

May 11. Complete file of P. U. C. O. taken by L. B. Brown. 5-13-33 returned. Taken by T. J. Herbert. 6-14-33 returned.

1934

January 25. Defendant's printed supplemental brief filed. 1-26-33 proof of service filed.

February 7. Plaintiff's printed supplemental brief and affidavit of service filed.

May 16. Order affirmed. Journal 33, page 461.

[fol. 63]

May 29. Application for rehearing and notice to Reporter and acknowledgment filed.

1934

June 6. Rehearing denied. Journal 33, page 473.
June 15. Petition for appeal, assignment of errors and prayer for reversal filed.
June 15. Statement of appellant as to grounds of jurisdiction filed.
June 15. Order allowing appeal filed.
June 15. Appeal Bond, West Ohio Gas Company, as principal, and United States Fidelity and Guaranty Company, as surety, in sum of $1000.00 approved and filed.
June 15. Order granting application for Supersedeas filed.
June 15. Citation and proof of service filed.
June 15. Notice and proof of service as required by Rule 14, paragraph 2 of Rules of United States Supreme Court filed.
June 22. Supersedeas Bond, United States Fidelity & Guaranty Company, as surety, in the sum of $4000.00 approved and filed.
July 2. Petition for order transmitting original exhibits filed.
July 2. Precipe for transcript of record and acknowledgement filed.
July 6. Order transmitting original exhibits filed.
July 11. Precipe of appellee and acknowledgment of service filed.
July 18. Supplemental precipe of appellant and proof of service filed.

## Journal Entries.

### Order Staying Execution

April 7, 1933.—Order on application for stay of execution. This cause coming on to be heard on the application of plaintiff in error for an order to stay execution of the final order of the Public Utilities Commission of Ohio herein complained of, was argued and submitted to the Chief Justice of this Court, the Court being in vacation. On consideration whereof and being fully advised in the premises, it is hereby ordered that said application be allowed and the said final order so made and entered by the said Public Utilities Commission, dated March 10, 1933, be and the same hereby is stayed until the further order of this Court upon the plaintiff in error

either giving an undertaking payable to the State of Ohio in the sum of $100.00, with surety to the satisfaction of the Clerk of this Court, conditioned according to law, or upon plaintiff in error depositing the sum of $100.00 in cash with the Clerk of this Court. It is further ordered as a further condition of said stay that the plaintiff in error impound and deposit in the City National Bank and Trust Company of Columbus, Ohio, all moneys collected on and after April 9, 1933 from the consumers affected by said final order of the Public Utilities Commission in excess of the amounts authorized under the rates prescribed in said final order, until the sum of $3,000 has been so impounded and deposited, such moneys so collected during each calendar month to be impounded and deposited on or before the 10th day of the succeeding calendar month, there to remain until the further order of this Court. Carl V. Weygandt, Chief Justice. Journal 33, page 151.

[fol. 64] JUDGMENT

May 16, 1934.—Error to the Public Utilities Commission of Ohio. This cause came on to be heard upon the transcript of the record of the Public Utilities Commission of Ohio, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the order of the said Public Utilities Commission of Ohio be, and the same is hereby, affirmed for the reasons stated in the opinion filed in this case; and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiff in error its costs herein expended taxed at $————. Ordered, That a special mandate be sent to the Public Utilities Commission of Ohio, to carry this judgment into execution. Journal 33, page 461.

ORDER DENYING REHEARING

June 6, 1934.—It is ordered by the Court that a rehearing herein be, and the same hereby is denied. Journal 33, page 473.

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[fol. 65] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 66] IN SUPREME COURT OF OHIO

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed June 15, 1934

Petition for Appeal

To Honorable Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio:

Considering itself aggrieved by the final decision of the Supreme Court of Ohio in the above entitled cause, West Ohio Gas Company, plaintiff in error therein and appellant in this appeal from said decision, hereby prays that an appeal may be allowed to the Supreme Court of the United States for the reasons specified in the assignment of errors hereinafter set out.

The case is one in which the validity of a final rate order of The Public Utilities Commission of Ohio, made and entered on March 10, 1933, and fixing rates to be charged by said appellant, West Ohio Gas Company, for gas utility service rendered within the city of Kenton, Ohio, for a period from on or about August 16, 1929, to February 16, 1933, is challenged upon the grounds that the rates fixed by the said final order were unlawful and unreasonable and confiscatory of the property of said appellant devoted to the public service, and, therefore, said final order im-
[fol. 67] pinges upon rights guaranteed said appellant by, and is invalid under, section one of the fourteenth amendment to the constitution of the United States, and that because said final order is not founded upon the evidence, because it disregards the evidence and because it is based upon matters not properly in evidence, said appellant has been denied the due process of law and equal protection of the laws to which said appellant is entitled under section one of the fourteenth amendment to the constitution of the United States.

And said appellant, West Ohio Gas Company, desires that said appeal shall operate as a supersedeas, and therefore prays that an order may be made fixing the amount of security which appellant shall give and furnish upon such appeal, and that upon giving such security the judgment of

the Supreme Court of Ohio and the execution thereof shall be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

Assignment of Errors

And said appellant, West Ohio Gas Company, assigns the following errors in the record and proceedings in said cause:

1. The Supreme Court of Ohio erred in that it held and found that the following rates, to wit:

400 cubic feet or less used per month, $1.00.
Next 2600 cubic feet used per month, 95¢ per M. C. F.
Next 3500 cubic feet used per month, 85¢ per M. C. F.
Next 3500 cubic feet used per month, 80¢ per M. C. F.
Over 10,000 cubic feet used per month, 75¢ per M. C. F.
House heating (as defined by company's schedule on file), 60¢ per M. C. F.,

fixed and determined by The Public Utilities Commission of Ohio, defendant in error in the above entitled cause and appellee in this appeal from the decision therein, in its final order dated March 10, 1933 (said order being hereinafter for convenience generally referred to as the "final order"), [fol. 68] as the rates to be charged by appellant for gas utility service rendered within the city of Kenton, Ohio (said utility service being hereinafter for convenience generally referred to as "Kenton service") during the period from and after on or about August 16, 1929 to February 16, 1933 (said period being hereinafter for convenience generally referred to as the "rate period"), are reasonable, lawful and non-confiscatory rates imposed upon appellant as charges for said Kenton service during said rate period, that said rates produced revenues sufficient to have enabled appellant during the rate period to produce and distribute gas to consumers within the city of Kenton, Ohio, at such a price as would enable appellant to conduct its business, pay the necessary and reasonable operating costs thereof and earn a fair, reasonable and non-confiscatory rate of return upon the fair value of the property devoted to Kenton service, and that the establishment thereof for said rate period would not deprive appellant of its property without due process of law and would not deny to appellant the

equal protection of the laws, contrary to the provisions of section one of the fourteenth amendment to the constitution of the United States.

2. The Supreme Court of Ohio erred in that it did not find that even under existing rates appellant is obtaining from Kenton service less than a compensatory return upon the fair value of its property devoted to Kenton service, and that it has obtained less than a compensatory return from said service during the period for which the final order of appellee was made effective, and each and every year thereof.

3. The Supreme Court of Ohio erred in upholding the action of appellee in ordering appellant to refund to its Kenton customers part of the moneys collected from them during any and all of the years covered by the rate period.

[fol. 69] 4. The Supreme Court of Ohio erred in that it upheld the action of appellee in relying, in the making of its final order, upon data taken from annual reports for the years 1928 and 1929 filed by appellant with appellee, which reports, together with appellant's annual report to appellee for 1930, were not properly introduced in evidence in said cause but were put in evidence after the close of the hearings therein, both without the knowledge or consent of appellant and without affording appellant any opportunity (although timely request therefor was made by appellant) to explain, clarify and show the misuse made by appellee of the information contained in said annual reports.

5. The Supreme Court of Ohio erred in that it upheld the action of appellee in refusing to put in evidence, or to give appellant an opportunity to put in evidence, the annual reports of appellant that were filed with appellee for the years 1931 and 1932.

6. The Supreme Court of Ohio erred in upholding the action of appellee in ignoring the evidence as to revenues, operating expenses and net return from Kenton service for the actual period for which it was fixing rates, and fixing such rates upon the basis of its findings as to the revenues, operating expenses and net return from Kenton service for the twelve-month period prior to the effective date of the rate ordinance appealed from.

7. The Supreme Court of Ohio erred in upholding the action of appellee in ignoring a substantial part, to wit, more than $1,950, of the amount for gas produced and purchased proved to have been expended by appellant in rendering Kenton service during the twelve-month period considered by appellee in making its final order in this cause.

8. The Supreme Court of Ohio erred in that, having upheld the action of appellee, when it was fixing rates for gas [fol. 70] utility service rendered by appellant in Lima, Ohio, in disregarding the actual cost for distribution and commercial expenses incurred by appellant for such service and limiting the allowance for such expenses to an amount determined by allocating an assumed system cost for such items on the basis of the ratio between all the customers served by appellant by its gas system and its customers in Lima, said Supreme Court of Ohio did not hold that a like basis must be applied in determining like items of operating costs for Kenton service. Appellant submits that the method of determining such expenses in the case involving rates for Lima service is erroneous, but that if such method is upheld, it must likewise be applied in fixing rates for any other municipality, including Kenton, Ohio, served with gas by appellant.

9. The Supreme Court of Ohio erred in upholding the action of appellee in ignoring a substantial part, to wit, more than $2,300, of the amount for general and miscellaneous expense proved to have been expended by appellant in rendering Kenton service during the twelve-month period considered by appellee in making its final order appealed from in this cause.

10. The Supreme Court of Ohio erred in upholding the action of appellee in failing and refusing, in determining net earnings of appellant, to take into account as an operating cost the expense of appellant in appealing from the rate ordinance of the city of Kenton passed July 16, 1929.

11. The Supreme Court of Ohio erred in that, although it upheld the action of appellee in fixing rates for Kenton service in this case for a period extending to February 16, 1933, it upheld the action of appellee in disregarding the fact that subsequent to the year 1931 the excise tax im-

posed by the laws of Ohio upon appellant in connection with its Kenton service was increased by a large amount, to wit, approximately $725 per year.

[fol. 71] 12. The Supreme Court of Ohio erred in that it upheld the action of appellee in taking into account in determining operating costs and net earnings of appellant from, and in fixing a statutory rate for, Kenton service a wholly inadequate amount for the item of depreciation or retirement allowance reserve, to wit, $2,619.74 per year; whereas appellee should have made an allowance for, and taken into account, an amount greatly in excess thereof, to wit, $4,154.58 per year.

13. The Supreme Court of Ohio erred in that it upheld the action of appellee in refusing to allow as an item of operating expense any amount whatsoever for the amortization of the gas transmission main used by appellant in Kenton service; whereas under the evidence in said proceedings, the sum of approximately $2,980 annually should have been allowed for such item.

14. The Supreme Court of Ohio erred in that it held that the method of allocating certain operating expenses which was adopted by appellee in fixing rates in this cause was not unfair to appellant and was not illegal.

15. The Supreme Court of Ohio erred in that it refused to require appellee in fixing rates for Kenton service to find the effect that the rates fixed by the final order would have upon revenues and net earnings from Kenton service for each or any of the years for which said rates were made effective.

16. The Supreme Court of Ohio erred in holding that a return of six per centum per annum on a rate base fixed by appellee would be a fair, non-confiscatory return for the rate period, when in fact a return of not less than eight per centum per annum on the rate base should have been allowed to avoid confiscation.

17. The Supreme Court of Ohio erred in holding that the rates complained of would have yielded a fair, non-con-
[fol. 72] fiscatory rate of return, when in fact not only would the rate of return under such rates be less than fair and non-confiscatory, but for 1930 and 1931 and subsequently said rates would not produce enough revenue to

pay the cost of rendering the service without any return whatsoever.

18. The Supreme Court of Ohio erred in that it refused to require appellee in fixing rates to determine for each year of the rate period the net return that appellant must be allowed to earn in order that the confiscation of appellant's property devoted to Kenton service would be avoided.

19. The Supreme Court of Ohio erred in upholding the action of appellee in fixing rates in this cause for a period longer than the term of two years designated in the rate ordinance of the city of Kenton, Ohio passed July 16, 1929.

20. The Supreme Court of Ohio erred in holding that when the integrity of operating expenses incurred by a public utility in rendering public service and not involving payments to an associated company is attacked, the burden is on the utility to prove the necessity and reasonableness of such expenditure.

21. The Supreme Court of Ohio erred in finding that there was in the record in this cause any attack made on the actual expenditures of appellant for gas produced and purchased, general and miscellaneous expense and/or rate case expense which would make applicable to this case the rule of law announced by said court and assigned as error in the foregoing assignment No. 20, even if as an abstract principle of law the said rule announced by said court were a correct one.

22. The Supreme Court of Ohio erred in that it did not find that appellee in making its final order and its findings in support thereof unduly and illegally invaded upon the [fol. 73] right of management and the freedom of ownership of appellant in the control and operation of its property used in rendering Kenton service.

23. The Supreme Court of Ohio erred in that it failed to accord due and proper weight to the evidence introduced in the proceedings before it, disregarded many of the facts established by such evidence, and upheld the final order of appellee although said final order and the findings therein are unsupported by the evidence introduced in said proceedings and are contrary to the facts established by such evidence.

24. The Supreme Court of Ohio erred in failing and refusing to give appellant that independent review of both the facts and the law which is essential to a proper judicial review of a rate order if appellant is to be afforded the equal protection of the laws and due process of law guaranteed appellant by section one of the fourteenth amendment to the constitution of the United States.

25. The Supreme Court of Ohio erred in that although it upheld the action of appellee in fixing rates for Kenton service in this case for a period extending to February 16, 1933, it sustained the action of appellee in refusing to grant the rehearing in said cause duly prayed for by appellant, and thereby denying appellant the right to show in evidence in said cause the exact effect which the rate fixed by appellee would have on the net earnings of appellant during the rate period, and each and every year thereof, and the right to show in evidence the facts as to its revenues received, expenses incurred and net earnings derived in rendering gas utility service within said city of Kenton, Ohio, for the calendar year 1932 and from January 1, 1933 to February 16, 1933, all being facts that were not available when hearings were completed in said cause.

## Prayer for Reversal

For which errors, said appellant, the above named West [fol. 74] Ohio Gas Company, prays that the said judgment of the Supreme Court of Ohio, entered May 16, 1934, in the above entitled cause, be reversed and a judgment rendered in favor of the said appellant, and for costs.

Dated this 12th day of June, 1934.

Chas. C. Marshall, Harry O. Bentley, Cooke, Sullivan & Ricks, Attorneys for West Ohio Gas Company, Appellant.

Presented June 12, 1934, and allowed June 15, 1934.

Carl V. Weygandt, C. J.

[fols. 74a-82] [File endorsement omitted.]

[fol. 83] IN SUPREME COURT OF OHIO

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 15, 1934

West Ohio Gas Company, plaintiff in error in the above entitled cause, having prayed for the allowance of an appeal therein to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of Ohio on the 16th day of May, 1934, and from each and every part thereof, and having presented and filed its Petition for Appeal, Assignment of Errors and Prayer for Reversal, and its Statement as to Jurisdiction on Appeal, pursuant to the statutes of the United States and the rules of the Supreme Court of the United States in such case made and provided; and it appearing from the said petition and the record of the above entitled cause that there is drawn in question the validity of a final rate order, of The Public Utilities Commission of Ohio, made and entered March 10, 1933, on the grounds that said final order deprives said West Ohio Gas Company of its property without due process of law, denies said West Ohio Gas Company the equal protection of the laws and is repugnant to section one of the fourteenth amendment to the constitution of the United States; and it [fol. 84] further appearing that the decision of the Supreme Court of Ohio was in favor of the validity of said final order and that said petition is a proper petition for the issuance of this order:

It is now hereby ordered by the undersigned, Chief Justice of the Supreme Court of Ohio, that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of Ohio in the above entitled cause, as provided by law, and it is further ordered that the clerk of the Supreme Court of Ohio shall prepare and certify the transcript of the record, proceeding and judgment in the above entitled cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within forty days from this date;

And it is further ordered, that security for costs of appeal be fixed in the sum of one thousand dollars ($1000.00).

Dated this 15th day of June, 1934.

Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

[fols. 84a-90] [File endorsement omitted.]

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[fols. 91 & 91a-93] Citation, in usual form, showing service on John W. Bricker and Donald C. Power, filed June 15, 1934, omitted in printing.

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[fol. 94] IN SUPREME COURT OF OHIO

[Title omitted]

ORDER GRANTING APPLICATION FOR SUPERSEDEAS—Filed June 15, 1934

This matter coming on for hearing before the undersigned, the Chief Justice of the Supreme Court of Ohio, on the application of West Ohio Gas Company, an Ohio corporation, for a supersedeas pending the determination of an appeal to the Supreme Court of the United States from a final judgment rendered on May 16, 1934 by the Supreme Court of Ohio against West Ohio Gas Company in that certain proceedings pending in the Supreme Court of Ohio between West Ohio Gas Company, an Ohio corporation, plaintiff in error, and The Public Utilities Commission of Ohio, defendant in error, being Cause No. 24105 on the docket of said court;

And it appearing that said West Ohio Gas Company has obtained an order allowing an appeal to reverse the said final judgment in the aforesaid suit, and has filed a copy thereof in the clerk's office of said Supreme Court of Ohio, and that a citation has been directed to the said The Public Utilities Commission of Ohio, citing and admonishing it to be and appear at the Supreme Court of the United States at Washington, D. C., within forty (40) days from the date thereof;

And the undersigned, the Chief Justice of the Supreme Court of Ohio, having heard argument by counsel for said

[fol. 95] West Ohio Gas Company and said The Public Utilities Commission of Ohio in reference to the granting of said supersedeas prayed for, and the terms thereof; and, being fully advised in the premises:

It is now hereby ordered that the said final judgment of said Supreme Court of Ohio rendered on May 16, 1934 in its said cause No. 24105, and the execution thereof, be, and the same are hereby, suspended and stayed until the determination of said appeal by the Supreme Court of the United States, upon said West Ohio Gas Company giving an undertaking, approved by the undersigned, said undertaking to be with surety to be payable to the State of Ohio for the benefit of consumers of gas served by said West Ohio Gas Company within the city of Kenton, Ohio, in the sum of four thousand dollars ($4000.00), and to be conditioned upon said West Ohio Gas Company prosecuting its said appeal to effect, answering and paying all damages if it shall fail to make good its said appeal, and making refunders to the consumers of gas served by it within said City of Kenton, Ohio, if the Supreme Court of the United States shall affirm said final judgment appealed from as aforestated.

It is now hereby further ordered, as a further condition of the granting of this supersedeas that during the pendency of said appeal said West Ohio Gas Company shall deposit and impound in the City National Bank and Trust Company at Columbus, Ohio, monthly, on or before the 10th day of each calendar month, a sum equal to the amount by which the amount realized by said West Ohio Gas Company from such rates for gas supplied within the city of Kenton, Ohio, as it is now or may at any time prior to the final determination of the aforesaid cause be charging exceeds the amount that it would have received if it had sold such gas at the rates provided in the rate order of the said The Public Utilities Commission of Ohio which was upheld by the said final judgment appealed from, said [fol. 96] moneys to be held pending the further order of the Supreme Court of Ohio made pursuant to the final decision of the Supreme Court of the United States.

Entered this 15 day of June, A. D., 1934.

Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

[fols. 96a-107] [File endorsement omitted.]

[fol. 108] IN SUPREME COURT OF OHIO

[Title omitted]

ORDER TRANSMITTING ORIGINAL EXHIBITS—Filed July 6, 1934

It appearing that in this cause it is necessary and proper in the opinion of the undersigned, the Chief Justice of the Supreme Court of Ohio, that certain original exhibits set out in the Præcipe for Transcript filed herein should be inspected in the Supreme Court of the United States upon the appeal of this cause; and that said exhibits cannot be reproduced accurately without great inconvenience, it is hereby ordered that the following exhibits referred to and described in the transcript of record herein, be transmitted by the clerk of the Supreme Court of Ohio to the clerk of the Supreme Court of the United States at Washington and returned after the disposition of the appeal to the clerk of the Supreme Court of Ohio, to-wit:

Commission Exhibits 1, 2, and 3 of March 8, 1933—Annual reports filed with The Public Utilities Commission of Ohio by West Ohio Gas Company for the years 1928, 1929 and 1930.

Dated this 6 day of July, A. D. 1934.

Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

[fol. 108a] [File endorsement omitted.]

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[fol. 109] BEFORE PUBLIC UTILITIES COMMISSION OF THE STATE OF OHIO

No. 5666

In the Matter of the Appeal of the West Ohio Gas Company from the Ordinance Passed by the City of Kenton, Ohio, July 16th, 1929, Ordinance No. 663, Fixing the Maximum Price to Be Charged for Gas in the City of Kenton, Ohio, for a Period of Two Years Commencing on the 16th Day of August, 1929

COMPLAINT

To the Honorable Public Utilities Commission of Ohio:

The West Ohio Gas Company says that it is a corporation duly organized and existing under the laws of the State of Ohio, for the purpose (among other purposes) of furnishing and distributing natural gas for light, heat, fuel and power for public and private consumption, that its principal office and place of business is in Lima, Ohio, and that for such purpose it has constructed, equipped and now owns, operates and maintains a distribution system, office and store house in the city of Kenton, Ohio, for the distribution and furnishing of natural gas for light, heat, fuel and power for public and private consumption, and for supplying natural gas to citizens, individuals, firms and corporations in the City of Kenton, Ohio.

This Complainant and its predecessors for a great number of years, to wit: more than twenty, have been so furnishing natural gas to the City of Kenton, Ohio, and its inhabitants for private and public lighting, heating, fuel and power purposes, and this Complainant is so engaged in the furnishing of natural gas in said City and to the inhabitants thereof under franchise rights granted by said City which are still in force and effect.

That on the 17th day of June, 1926, this Complainant duly filed with this Commission a schedule of rates, designated and known as "P. U. C. O. No. 2", fixing the rates to its consumers in Kenton, Ohio, which became and was effective on the first day of August, 1926, and is still in full force and effect in all respects according to law, and this Complainant is now furnishing gas as aforesaid under said schedule and at the prices therein fixed, a copy of which said schedule P. U. C. O. No. 2 is hereto attached and marked "Exhibit A".

That on the 16th day of July, 1929, the City Council of the City of Kenton, Ohio, passed an Ordinance under the authority of Sections 614-44 and 3983 of the General Code of Ohio, fixing the price which may be charged for natural gas in the City of Kenton, Ohio, for a period of two years, commencing on the 16th day of August, 1929, which Ordinance Complainant understands is now effective, a copy of which Ordinance is hereto attached, marked "Exhibit B" and made a part hereof.

Said Ordinance was duly approved by the Mayor of the City of Kenton, Ohio, and was published as required by law.

Said Ordinance was not and has not been accepted by this Complainant.

[fol. 110] Complainant says that the rate, price and charge so fixed by said Council in said Ordinance for natural gas as aforesaid, is and will be unjust, unreasonable, confiscatory and unlawful in the following respects, to-wit:

First: Said rate, price or charge will not yield the Complainant a just compensation for the furnishing and distributing of natural gas to the citizens, individuals, firms and corporations in the said City of Kenton, Ohio, in that

(a) It will not yield the Complainant a fair, just and reasonable return on the value of its property used and useful in furnishing, distributing and supplying natural gas as aforesaid;

(b) It will not yield sufficient revenue to pay the cost of furnishing, distributing and supplying natural gas as aforesaid;

(c) It will result in the taking of the property of the Complainant for public use without compensation and without due process of law.

Second: Said rate, price or charge will result in denying to Complainant, a fair, just and reasonable return upon the value of the property used and useful in furnishing natural gas for light, heat, fuel and power to the inhabitants and public as aforesaid in the City of Kenton, Ohio.

Third: The rate, price or charge fixed in said Ordinance is confiscatory and denies to this Complainant reasonable and just compensation for furnishing natural gas for light, heat, fuel and power, and denies to Complainant a fair, just and reasonable return on the value of its property used and useful for the public convenience, and said rate, price or charge is so unreasonable as to practically destroy the value of the property of the Complainant, and the enforcement of said Ordinance will result in taking the property of said Complainant for public use without compensation and without due process of law, and will deprive this Complainant of the equal protection of the law in con-

travention of the Constitution of the State of Ohio, and the Constitution of the United States and the amendments thereto.

This Complainant further says that it has not accepted said Ordinance nor any of the terms and provisions thereof, nor the price to be charged for natural gas as therein fixed, and cannot and does not accept the same; that Section 614-44 of the General Code of Ohio, provides that the filing of a complaint by a Public Utility against a rate established by Council as in this case, shall be taken and held to be the consent of such Public Utility to furnish its product or service and to devote its property engaged therein to such Public use during the term so fixed by the Ordinance; that Complainant is in this proceeding appealing to this Commission from the rate fixed by the Council of the City of Kenton, Ohio, and is agreeing by reason of said provisions of the Statutes of Ohio only, that it will continue to furnish its service and devote its property engaged therein to such public use during the term so fixed by said Ordinance.

This Complainant further represents to this Honorable Commission that the rate and price fixed by said Ordinance is unfair, unjust, unreasonable, confiscatory and unlawful and will not yield reasonable and just compensation to Complainant on the value of its property used and useful in furnishing, distributing and supplying gas, and will not yield sufficient revenue to pay the cost of furnishing, distributing or supplying natural gas as required by said Ordinance, and amounts to a confiscation of the property of the Complainant for public use without due compensation and without due process of law in violation of its [fol. 111] established rights, both under the Constitution of Ohio and the Constitution of the United States and the amendments thereto, and for the further reason that the West Ohio Gas Company is solely a distributing organization in said City of Kenton, Ohio, having no natural gas supply of its own and having no interest in any other concern, firm or corporation owning or controlling a natural gas supply, nor does it own any gas fields, nor is it interested with any concern, firm or corporation which does now own or control gas fields; that ever since it has been operating under its said franchise in the City of

Kenton, Ohio, it has been compelled to obtain its natural gas supply from various sources by purchase from available sources of supply upon the best terms obtainable; that for the past fourteen years this Complainant and its predecessors have been operating under contracts and agreements with The Ohio Public Service Company and others whereby said The Ohio Public Service Company and others furnished the supply of natural gas, and this Complainant is now so operating, furnishing and distributing natural gas in the City of Kenton, Ohio, by purchasing its natural gas supply as aforesaid.

Complainant says that its contract for supplying natural gas to the inhabitants of the City of Kenton, Ohio, made with The Ohio Public Service Company expired on the 31st day of December, 1928, that in order to enable it to continue the furnishing of natural gas to the inhabitants of Kenton, Ohio, as aforesaid, it made and entered into a contract with The Ohio Fuel Gas Company of Columbus, Ohio, successor to The Ohio Public Service Company, for the purchase of an adequate supply of natural gas so that Complainant might continue to furnish the same as aforesaid to the inhabitants of the City of Kenton, Ohio, and other consumers in its system, a true copy of which said contract is hereto attached, marked "Exhibit C" and made a part hereof, that said contract was made upon the best terms and at the lowest price obtainable anywhere after making due and diligent effort to obtain wherever possible the best contract for an adequate gas supply for its customers, and Complainant at said time notified the City of Kenton, Ohio, and the authorities in other municipalities to inform this Complainant where it might obtain a natural gas supply adequate for its purposes, if they were able to do so.

Complainant avers that in its business it is furnishing gas in the municipalities of St. Marys, Celina, Wapakoneta, Cridersville, Lima and the City of Kenton, Ohio, and certain inhabitants adjacent to its lines, and that in order to so furnish gas to the inhabitants of the various municipalities aforesaid, it owns a large transmission line commencing at a point in Mifflin Township, Wyandot County, Ohio, leading to the various municipalities named, and that said transmission line is necessary, used and useful in supplying natural gas in the City of Kenton, Ohio, by this Complainant.

This Complaint is made under authority and provisions of Sections 614-44 to 614-46, General Code of Ohio, (among others) and Complainant hereby elects to charge the schedule of rates in force and effect under said P. U. C. O. No. 2 on July 16, 1929, the date of the passage of said Ordinance until this appeal is disposed of by this Commission in accordance with law, and as is by statute in such case made and provided.

Wherefore, Complainant on this Appeal prays that a time may be fixed for the hearing of this Complaint; that notice of the filing and pendency thereof be given as provided by law; that upon the hearing of this Complaint your Honorable Commission may find and determine that said rate, price or charge fixed by the Ordinance of the City of Kenton, Ohio, is unjust, unfair, unreasonable, confiscatory and unlawful; that thereupon your Honorable Commission shall fix and determine the just, fair and reason-[fol. 112] able rate or schedule of rates to be charged by the Complainant for furnishing and distributing and being ready, willing and able to furnish and distribute natural gas to the citizens and public generally of the City of Kenton, Ohio, and order that the same be substituted for the rate, price or charge fixed by said Ordinance and for such other orders and relief as may be just and proper in this case.

West Ohio Gas Company, Appellant, by F. L. Daily, by H. O. Bentley, by J. H. Gocke, Its Attorneys.

Dated August 15th, 1929.

*Duly sworn to by Emmett R. Curtin. Jurat omitted in printing.*

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[fol. 113] EXHIBIT "A" TO COMPLAINT

P. U. C. O. No. 2 cancels P. U. C. O. No. 1

West Ohio Gas Company, Natural Gas, Kenton, Ohio

Issued June 10, 1926. Effective August 1, 1926

Emmett R. Curtin, President, Lima, Ohio

Rates to Take Effect August 1st, 1926

For the first 400 cubic feet or less, per month $1.25.
For the next 2,600 cubic feet @ $1.10 per 1,000 cu. ft.

For the next 7,000 cubic feet @ $1.00 per 1,000 cu. ft.
For all over 10,000 cubic feet @ $.75 per 1,000 cu. ft.

Rates for Gas for House-Heating During the Months of September, October, November, December, January, February, March, April and May

For the first 1,000 cubic feet of gas or less per month, $3.00.

For all gas used in excess of the first 1,000 cubic feet @ 75 cents per 1 M. cu. ft.

The foregoing optional schedule of rates is applicable to gas purchased and used for the purpose of house heating, only. They do not apply to gas purchased and used for space or auxiliary heating. All gas purchased at the foregoing rates must be measured through a separate meter used for that purpose only.

All bills are due and payable on the date rendered; if not paid within ten (10) days thereafter an additional charge of ten (10¢) cents per M. cubic feet will be made.

[fol. 114] Rules and Regulations

1. All Service Pipe and Fixtures from the curb or Company's street box are to be put in at the expense of the consumer, who shall keep the same in good repair, and while connected with the main pipe the said Attachments, Service Pipe and Fixtures will be subject to the inspection and control of the officers and agents of said Company.

2. The company, by its authorized agents, shall have the right to enter upon the premises at all reasonable times for the purpose of inspecting the manner of using the Gas and to disconnect the Service Pipe thereon and shut off the Gas for any of the following reasons: First, for repairs or inspection. Second, for non-payment of bills when due. Third, for fraudulent representation in relation to consumption of gas. Fourth, for making any changes in the connection without the written consent of the Company.

3. Particular care must be taken by all consumers to detect leaks or breaks permitting the escape of gas; and when the escape of gas is apparent, the use of gas on the premises must be at once discontinued, and immediate notice of the escape must be given at the office of the Company, which

notice must state the fact of the leaks as well as the name of the party or parties using the premises.

4. The Company shall not be liable in any event for damage to persons or property arising, accruing or resulting from the use of gas or from any defect in plumbing, gas fitting, or house piping.

5. All bills are due and payable on the date rendered, and must be paid at the office of the Company. The supply of gas will be discontinued if payment is not fully made within ten (10) days after rendition of the bill.

6. A deposit shall be made under General Code Section 9334, by consumers upon making application for gas service; which deposit shall be held by the Company and be returned whenever the meter is surrendered to the company, and all indebtedness for service settled in full.

7. Whenever gas shall have been turned off or meter disconnected by reason of non-compliance with the Company's rates, rules and regulations, as published herein, an extra charge of $1.00 must be paid at the office of the company before the gas is turned on again.

8. The charge for moving or re-setting a meter, other than the first installation, will be $1.50 payable in advance.

9. The charge for re-reading a meter, when original reading is found to be correct, will be $.50.

10. The charge for testing a meter, when same is found correct, will be twenty-five (25¢) cents plus the expense of removing it for the purpose of being tested. (Per Section 9329, Laws of Ohio, regulating Public Utilities.)

11. A charge of $1.00 may be made for adjusting consumer's stoves and other gas appliances.

12. Installation of service lines to vacant lots to be at cost of owner. If gas is used through said service lines within six (6) months after installation, cost of same to be refunded to lot owner.

[fol. 115] EXHIBIT "B" TO COMPLAINT

## Ordinance No. 663

An Ordinance to regulate the price of natural gas furnished to the citizens of the City of Kenton, Ohio.

Be it ordained by the Council of the City of Kenton, State of Ohio:

Section 1. That any company or companies engaged in the business of transporting and selling natural gas which may have acquired or may hereafter acquire the right to lay its or their pipes, mains and lines, in, through or under the streets and alleys of the City of Kenton, Ohio, for the purpose of furnishing natural gas to the citizens of said City of Kenton, Ohio, may, for a period of Two years from and after the 16th day of August 1929, be entitled to charge the persons, firms, partnerships and corporations within said city so furnished natural gas for lighting or fuel purposes, the following rates for such natural gas consumed in any one month, to-wit:

1st: For the first four hundred (400) cubic feet of gas or any less amount, ninety cents (90¢);

2nd: For the next twenty-six hundred (2600) cubic feet (that is, in excess of 400 cubic feet and not exceeding 3,000 cubic feet) at the rate of seventy-five cents (75¢) per thousand cubic feet.

3rd: For the next seven thousand (7,000) cubic feet (that is, in excess of 3,000 and not exceeding 10,000 cubic feet) at the rate of sixty-five cents (65¢) per thousand cubic feet;

4th: For all gas over and in excess of 10,000 cubic feet at the rate of sixty cents (60¢) per thousand cubic feet.

Section 2. No other rates or charges than those herein set forth shall be made by such company or companies during said term of years.

Section 3. If the company or companies so to furnish such natural gas, by written acceptance filed in the office of the Auditor or Clerk and so declares its or their purpose to furnish gas under the terms of this ordinance, then the Council shall not require such company or companies to

furnish natural gas to the citizens of said City of Kenton, Ohio, at a less price or at any other rates than those hereinabove set forth for said period of years.

Section 4. That all ordinances or parts of ordinances in conflict or inconsistent herewith be and the same are hereby repealed.

Section 5. This ordinance shall take effect and be in force from and after the earliest period allowed by law.

J. C. White, President of Council Pro Tem.

Passed: July 16, 1929.
Approved: July 17th, 1929.
W. J. Ochs, Mayor of the City of Kenton, Ohio.

Attest: Roy E. Kempsell, Clerk of Council.

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[fol. 116] EXHIBIT "C" TO COMPLAINT

Agreement

This agreement made as of the date of January 1, 1929, by and between the West Ohio Gas Company, a corporation of the State of Ohio, first party, hereinafter called the "Lima Company," and The Ohio Fuel Gas Company, a corporation of the State of Ohio, second party, hereinafter called the "Ohio Company,"

Witnesseth

Whereas the Lima Company is engaged in selling and distributing manufactured gas to customers in the City of Lima, and natural gas to customers in certain other communities of the State of Ohio, namely, Kenton, Cridersville, Wapakoneta, St. Marys and Celina and to certain rural customers hereinafter referred to, and desires to purchase from the Ohio Company a supply of natural gas in order to enable said Lima Company to furnish gas to its said customers, and

Whereas the Ohio Company is engaged in producing and distributing natural gas in the State of Ohio and is desirous of selling to the Lima Company a supply of natural gas for use in the manufacture of gas for distribution by

said Lima Company to its customers in the city of Lima, and also for the furnishing of a supply of natural gas to its customers in the said other communities, namely, Kenton, Cridersville, Wapakoneta, St. Marys and Celina, and to its said rural customers, and

Whereas the Lima Company is the owner of a certain pipe line extending easterly from the city limits of the City of Lima, Ohio, to a point in the public highway where said highway intersects the north and south line between section one (1) and section twelve (12) in Marseilles Township, Wyandot County, Ohio, at which point said pipe line is connected with a pipe line of the Ohio Company extending easterly therefrom; and

Whereas the Lima Company has certain rural customers located at various points along the route of said pipe line, [fol. 117] who purchase gas from the Lima Company and receive the same through service pipes extending from the premises of said customers to said pipe line and connected therewith.

Now therefore in consideration of the premises and the mutual promises and agreements hereinafter contained it is agreed as follows:

Article I

The Ohio Company covenants and agrees:

(1) That it will furnish and deliver to the Lima Company a supply of natural gas as follows:

(a) A volume of natural gas sufficient to enable the Lima Company to furnish an adequate supply of natural gas to its customers in Kenton, Cridersville, Wapakoneta, St. Marys and Celina, and its aforesaid rural customers.

(b) A volume of natural gas for use in the manufacture of gas for distribution in the City of Lima, sufficient to provide for the production of such manufactured gas of satisfactory quality without the use of oil or other enriching agent.

2. That it will transport said gas (except the portion referred to in paragraph 3 of this Article I) through the aforesaid pipe line owned by the Lima Company, and will deliver that portion thereof which is for use in the City of Kenton at the point where the same is to be metered as hereinafter provided, and will deliver the remainder of

such gas at the point near the City of Lima where the same is to be metered as hereinafter provided.

3. That it will purchase such supply of natural gas as is available from wells in the vicinity of Celina and will deliver the same to the Lima Company in the pipes of the Lima Company at or near the City of Celina at the point where the Ohio Company has heretofore installed and now maintains a certain meter for measurement of such gas.

4. That it will maintain such pressure at the several metering stations hereinafter described as will assure satis- [fol. 118] factory delivery of the gas supplied hereunder.

5. That it will, at its own expense, make such repairs upon the aforesaid pipe line as may from time to time during the term hereof be necessary to keep said line in a reasonable state of repair, provided, that in case it shall become necessary to relocate or remove any part of said pipe line for reasons other than ordinary maintenance thereof the expense of such removal or relocation shall be borne by the Lima Company, and provided, also, that the Ohio Company shall not be obligated with respect to the maintenance of any service pipes connected with said pipe line for the purpose of supplying customers of the Lima Company along the route thereof.

6. That the heating value of the natural gas to be delivered hereunder shall be the same as that of the natural gas which, at the time of delivery hereunder, is being distributed generally by the Ohio Company throughout its system.

Article II

The Lima Company covenants and agrees:

1. That it will purchase from the Ohio Company all of its natural gas requirements for the supplying of natural gas to its customers in Kenton, Cridersville, Wapakoneta, St. Marys and Celina, together with its aforesaid rural customers, and for the production of manufactured gas at the City of Lima during the term hereof, and will not during said term modify its method of gas supply or production in any respect such as to eliminate or decrease the necessity for a natural gas supply as the same exists under its present method of operation and production.

2. That it will accept delivery of such natural gas supplied to it by the Ohio Company for use in the City of Kenton at the meter near said city, hereinafter referred to; that it will accept delivery of that portion of such gas available near the City of Celina as aforesaid at the meter near [fol. 119] the City of Celina, hereinafter referred to; that it will accept delivery of gas taken by it off the said pipe line for the purpose of supplying its said rural customers at the points where the service pipes of such customers are connected with said pipe line; and that it will accept delivery of the remainder of such gas at the meter near the City of Lima, hereinafter referred to.

3. That it will pay to the Ohio Company for all gas delivered to it hereunder by the Ohio Company the sum of fifty-five (55¢) cents per thousand cubic feet metered at the flowing temperature and measured on an eight (8) ounce basis above an assumed atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch, or 14.9 pounds per square inch absolute pressure at a temperature of 55° Fahrenheit (commonly called storage temperature) according to recognized or approved standard methods as applied to the meters heretofore referred to and located as above provided.

4. That the Ohio Company shall have the right to use all or any portion of the aforesaid pipe line owned by the Lima Company for the transportation of such quantity of natural gas as it may find necessary or desirable for any purpose other than the supplying of gas to the Lima Company, provided such use does not interfere with or diminish the supply to the Lima Company herein provided for.

5. That it will so operate its plant and system as to give all reasonable assistance to the Ohio Company to maintain in the said pipe line such pressure as will make possible the proper and satisfactory delivery by the Ohio Company of the volume of gas herein provided for.

## Article III

It is mutually agreed and understood by the parties:

1. That the gas delivered hereunder for use in the City of Kenton shall be measured by a meter of a standard type to be furnished and maintained by the Ohio Company and

located at a point near the City of Kenton where the same [fol. 120] or a like meter has heretofore been installed for such purpose; that the gas procured from a supply near the City of Celina as aforesaid shall be metered through a meter heretofore installed and owned by the Ohio Company near the City of Celina for that purpose or such other meter of standard type as shall hereafter be installed by it at the same point; that the gas purchased hereunder by the Lima Company for sale to its rural customers aforesaid shall be measured by taking the aggregate of the readings of the individual meters of such customers; and that the remainder of the gas supply hereunder shall be metered by a meter of a standard type to be furnished and maintained by the Ohio Company and installed at a point in the said pipe line near the City of Lima immediately east of the first take-off or branch line of the Lima Company from said pipe line.

2. That the Lima Company shall have the privilege of installing and maintaining suitable and standard meters or measuring equipment or apparatus along the said pipe line in proximity to the said meters installed and maintained by the Ohio Company near the cities of Lima, Kenton and Celina, to be used for checking purposes and to assist in determining the accuracy of the meters so installed by the Ohio Company; and that any dispute as to the accuracy of any of the gas measuring equipment or as to the volume of natural gas delivered shall be determined by a committee as provided in Section 5 of this Article III.

3. That monthly joint inspections of the measuring equipment near the City of Lima (and so far as practicable, of the measuring equipment near the cities of Kenton and Celina) shall be made by at least one representative from each company on a date mutually agreed upon between the 25th day and the last day of each month; and that each party hereto may, in addition thereto, call for a special joint inspection at any time and the other party shall thereupon be obligated to join in such inspection.

[fol. 121] 4. That each day at an hour to be agreed upon by the parties hereto, the charts on the said Kenton, Lima and Celina meters shall be changed by a representative of the Ohio Company and the amount of gas measured by said meters shall be reported to the Lima Company as soon as

the same is computed from said charts; and that the Lima Company shall be furnished with said charts for the purpose of checking said computations.

5. That the Ohio Company shall on or before the 5th day of each calendar month render to the Lima Company a bill at the rates herein provided for the gas delivered to the Lima Company during the preceding calendar month as measured at the said Kenton, Lima and Celina meters and the Lima Company shall pay the same on or before the 20th day of the month in which the bill is rendered; and shall in addition to and concurrently with such payment of said bill render to the Ohio Company a statement of the amount of gas consumption by the said rural customers during the previous calendar month, accompanied by the amount in payment for the same; that if the Lima Company shall dispute the accuracy of the various measuring devices or the amount or quality of gas delivered, or otherwise question said bill, or if the Ohio Company shall question said statement of the consumption of gas by the said rural customers, the matter shall be referred to a committee consisting of one representative appointed by each of the parties to this contract, the two in case of disagreement to select a third person, and their decision shall be binding upon both parties hereto; and that payment of the bill rendered shall be considered as final evidence of satisfaction as to the accuracy of the measuring devices and meters, the computation of the charts and the amount of the bill.

6. That the term of this contract shall be five (5) years from and after the first day of January, 1929.

7. That inasmuch as the long continuance of a gas supply [fol. 122] is largely dependent upon the discovery of gas in new fields, the Ohio Company cannot and does not hereby covenant and agree to furnish an uninterrupted uniform supply as regards either quality or quantity to the Lima Company, but agrees to supply only such gas it may have available for sale under the terms of this agreement; and that the Ohio Company shall not be liable to the Lima Company for any damage resulting directly or indirectly from or on account of any shortage or failure in the pressure or supply of gas delivered to the Lima Company, nor for any damage or injury to any person, firm or corporation, occasioned by any shortage, failure or fluctuation in

the supply or pressure of gas, or in the quality or character thereof, or occasioned by fires, strikes, riots, insurrections, floods, storms, or other effects of the elements, acts of God, or by any accidents to its wells, machinery, pipes, lines or other equipment.

8. That this contract shall be binding upon the successors and assigns of either or both of the parties hereto.

In witness whereof, the parties hereto have caused their respective corporate names to be signed and their respective corporate seals to be affixed hereto in duplicate by their respective officers thereunto duly authorized as of the day and year first above written.

The Ohio Fuel Gas Company, by (Signed) Raymond Cross, President.

Attest: (Signed) P. A. Allurty, Secretary. (Seal.)

West Ohio Gas Company, by (Signed) Emmett R. Curtin, President.

Attest: (Signed) F. L. Pringle, Asst. Secretary. (Seal.)

Approved as to Form:

Cooke, Sullivan & Ricks, by (Signed) Daily.

Approved.

(Signed) I. K. Peck, Gas Engineer.

Date: March 18, 1929.

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[fol. 123] Before the Public Utilities Commission of Ohio

No. 5666

[Title omitted]

Finding and Order Fixing Tentative Valuation

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the complaint of and appeal by the West Ohio Gas Company from the ordinance passed July 16th, 1929, by the Council of the city of Kenton, Ohio, fixing the price which may be charged for natural gas in the city of Kenton, Ohio, for a period of two years, commencing on the 16th day of August, 1929.

And the Commission coming now to value the property of said appellant, used and useful for the convenience of the public for the furnishing of its natural gas service in the said city of Kenton, and after considering the evidence and exhibits offered at the hearing, and having completed an independent inventory and valuation of said property, and being fully advised in the premises,

The Commission finds and ascertains the value of the several kinds and classes of property of the West Ohio Gas Company used and useful for the convenience of the public in the furnishing of natural gas service to its consumers and to the public in the city of Kenton, Ohio, and of said property as a whole, as of August 15th, 1929, to be as set forth in the following summary (the grand totals of which are, Reproduction Cost New $228,665.44, and Present value, $188,902.37), namely:

| No. of Items Acct. No. | Description | Unit cost | Reproduction value | Depreciation % | Depreciation Amount | Total % | Total Depreciation | Present value |
|---|---|---|---|---|---|---|---|---|
| | **Final summary** | | | | | | | |
| 220 | Rights of Way | .... | 1,337.67 | .... | ..... | 0 | 0 | 1,337.67 |
| 225 | Transmission System Measuring Station Equipment | .... | 732.76 | .... | ..... | 10.0 | 73.28 | 659.48 |
| 226 | Transmission Line Equipment | .... | 54,773.86 | .... | ..... | 16.37 | 8,963.93 | 45,809.93 |
| 228 | Land | .... | 500.00 | .... | ..... | 0 | 0 | 500.00 |
| 231 | District Regulator Structures | .... | 269.62 | .... | ..... | 25.00 | 67.40 | 202.22 |
| 233 | Gas Receivers and District Regulators | .... | 754.00 | .... | ..... | 16.57 | 124.92 | 629.08 |
| 234 | Distribution Line Equipment | .... | 107,064.76 | .... | ..... | 20.5 | 21,977.64 | 85,087.12 |
| 235 | Service Line Equipment | .... | 14,492.57 | .... | ..... | 22.57 | 3,270.83 | 11,221.74 |
| 236 | Meters | .... | 19,900.75 | .... | ..... | 10.0 | 1,990.07 | 17,910.68 |
| 237 | Meter Installations | .... | 1,730.53 | .... | ..... | 10.0 | 173.05 | 1,557.48 |
| 238 | House Regulators | .... | 7.02 | .... | ..... | 15.0 | 1.05 | 5.97 |
| 239 | Other Distribution System Equipment | .... | 428.10 | .... | ..... | 25.0 | 107.02 | 321.08 |
| 249 | General Office Equipment | .... | 1,964.08 | .... | ..... | 8.49 | 166.73 | 1,797.35 |
| 250 | General Store Equipment | .... | 41.04 | .... | ..... | 5.0 | 2.05 | 38.99 |
| 251 | General Shop Equipment | .... | 236.07 | .... | ..... | 13.36 | 31.54 | 204.53 |
| 253 | General Garage Equipment | .... | 1,066.32 | .... | ..... | 19.90 | 212.24 | 854.08 |
| | Total Physical Property | .... | 205,299.15 | .... | ..... | 18.10 | 37,161.75 | 168,137.40 |
| 200 | Organization | | | | | | | |
| 258 | Engineering | | | | | | | |
| 262 | Law Expenditure During Construction | 7% | 14,370.94 | .... | ..... | 18.10 | 2,601.32 | 11,769.62 |
| 265 | Taxes During Construction | | | | | | | |
| 266 | Interest During Construction | | | | | | | |
| 267 | Other Expenditures During Construction | | | | | | | |
| | Total Fixed Capital | .... | 219,670.09 | .... | ..... | 18.10 | 39,763.07 | 179,907.02 |
| | Working Capital and Supplies—5% Pres. Value | .... | 8,995.35 | .... | ..... | 0 | 0 | 8,995.35 |
| | Grand total | .... | 228,665.44 | .... | ..... | 17.39 | 39,763.07 | 188,902.37 |

[fols. 125-131] It is, therefore,

Ordered, That notice of such valuation so placed upon the said property be transmitted by registered letter to the said West Ohio Gas Company, and to the Mayor of Kenton, Ohio, all as provided for under Section 499-12 of the General Code of Ohio. It is, further,

Ordered, That all inventories, valuations, transcripts and exhibits be filed and considered as a part of the record herein. It is fu-ther,

Ordered, That the Commission reserve the right in the event it shall determine the aforesaid inventory to be incomplete or inaccurate, or that said valuation is incorrect, and to make such changes therein as may be necessary before the said tentative valuation shall become final.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman, Frank W. Geiger, John Bricker, Commissioners.

Dated at Columbus, Ohio, this 15th day of September, 1931.

Approved.

William Roger Dwyer, Chief Engineer. Ira E. Sprankle, Supt. of Investigation.

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[fol. 132] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

[Title omitted]

FINDING AND ORDER FIXING FINAL VALUATION

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the protests to the tentative valuation certified herein September 15th, 1931 and the testimony and exhibits offered and introduced in evidence upon such hearing.

The Commission, being fully advised in the premises, finds that the following additions should be made to said tentative valuation to incorporate therein, 1,553 feet of ten

inch transmission main properly allocable to the service in the City of Kenton, Ohio, to-wit:

Account No. 220, Right of Way: Reproduction Value, $29.19; Depreciation, 0; Present Value, $29.19.

Account No. 226, Transmission Line Equipment: Reproduction Value, $973.14; Depreciation, $153.03; Present Value, $820.11.

Total Physical Property: Reproduction Value, $1,002.33; Depreciation, $153.03; Present Value, $849.30.

General Overheads: Reproduction Value, $70.16; Depreciation, $10.71; Present Value, $59.45.

Total Fixed Capital: Reproduction Value, $1,072.49; Depreciation, $163.74; Present Value, $908.75.

Working Capital Including Supplies: Reproduction Value, $45.44; Depreciation, 0; Present Value, $45.44.

Grand Total: Reproduction Value, $1,117.93; Depreciation, $163.74; Present Value, $954.19.

The Commission further finds that the protests to said tentative valuation are not well taken in any other respect, and that the same should be, and hereby they are overruled in all other respects, it is, therefore,

Ordered, that the Commission do find, ascertain and determine the final value, as of August 15th, 1929, of the several kinds and classes of property of The West Ohio Gas Company, used and useful for the convenience of the public, in the furnishing of natural gas service to its consumers, and to the public, in the City of Kenton, Ohio, and of said property as a whole, to be set forth in the following summary (the grand totals of which are, Reproduction Cost New $229,783.37, Depreciation, $39,926.81, and Present Value, $189,856.56), namely:

The West Ohio Gas Company, Kenton, Ohio

| No. of items | Description | | Reproduction value | Total % | Total depreciation | Present value |
|---|---|---|---|---|---|---|
| 220 | Rights of Way | | 1,366.86 | 0 | 0 | 1,366.86 |
| 225 | Transmission System Measuring Station Equip | | 732.76 | 10.0 | 73.28 | 659.48 |
| 226 | Transmission Line Equipment | | 55,747.00 | 16.35 | 9,116.96 | 46,630.04 |
| 228 | Land | | 500.00 | 0 | 0 | 500.00 |
| 231 | District Regulator Structures | | 269.62 | 25.0 | 67.40 | 202.22 |
| 233 | Gas Receivers and District Regulators | | 754.00 | 16.57 | 124.92 | 629.08 |
| 234 | Distribution Line Equipment | | 107,064.76 | 20.5 | 21,977.64 | 85,087.12 |
| 235 | Service Line Equipment | | 14,492.57 | 22.57 | 3,270.83 | 11,221.74 |
| 236 | Meters | | 19,900.75 | 10.0 | 1,990.07 | 17,910.68 |
| 237 | Meter Installations | | 1,730.53 | 10.0 | 173.05 | 1,557.48 |
| 238 | House Regulators | | 7.02 | 15.0 | 1.05 | 5.97 |
| 239 | Other Distribution System Equipment | | 428.10 | 25.0 | 107.02 | 321.08 |
| 249 | General Office Equipment | | 1,964.08 | 8.49 | 166.73 | 1,797.35 |
| 250 | General Store Equipment | | 41.04 | 5.0 | 2.05 | 38.99 |
| 251 | General Shop Equipment | | 236.07 | 13.36 | 31.54 | 204.53 |
| 253 | General Garage Equipment | | 1,066.32 | 19.90 | 212.24 | 854.08 |
| | Total Physical Property | | 206,301.48 | 18.09 | 37,314.78 | 168,986.70 |
| 200 | Organization | | | | | |
| 258 | Engineering | | | | | |
| 262 | Law Expenditures During Construction | 7% | 14,441.10 | 18.09 | 2,612.03 | 11,829.07 |
| 265 | Taxes During Construction | | | | | |
| 266 | Interest During Construction | | | | | |
| 267 | Other Expenditures During Construction | | | | | |
| | Total Fixed Capital | | 220,742.58 | 18.09 | 39,926.81 | 180,815.77 |
| | Working Capital Including Supplies—5% of Present Value | | 9,040.79 | 0 | 0 | 9,040.79 |
| | Grand Total | | 229,783.37 | 17.38 | 39,926.81 | 189,856.56 |

[fol. 134] To which order of the Commission, the protestants each then excepted, here now except, and their exceptions here are noted of record.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; John W. Bricker, —— ——, Commissioners.

Dated at Columbus, Ohio, this 27th day of January, 1932.

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[fol. 135] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

[Title omitted]

ORDER PLACING ANNUAL REPORTS IN EVIDENCE

Upon the Commission's own motion and for the purpose of completing the record herein, it is,

Ordered, That the annual reports filed with this Commission by the West Ohio Gas Company for the years 1928, 1929 and 1930 be, and hereby they are introduced in evidence and made a part of the record herein as Commission Exhibits, 1, 2, and 3.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank M. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 8th day of March, 1933.

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[fol. 136] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

In the Matter of the Appeal of the West Ohio Gas Company from an Ordinance Passed by the City of Kenton, Ohio, July 16th, 1929, Being Ordinance No. 663, Fixing Maximum Price for Gas in the City of Kenton, Ohio, for a Period of Two Years Commencing August 16, 1929

ORDER FIXING RATES

This day after full hearing and argument by counsel, this matter came on for final consideration upon the complaint

of and appeal by the West Ohio Gas Company from Ordinance No. 663 passed by the Council of the city of Kenton, Ohio, July 16th, 1929, fixing the maximum price for gas in the city of Kenton, Ohio, for a period of two years, commencing August 16th, 1929, and the record made upon such hearing.

The Commission, being fully advised in the premises, and having caused an appraisement to be made and having ascertained, determined and fixed the value of all of the property of said company actually used and useful for the convenience of the public in the furnishing of natural gas for public and private consumption in the city of Kenton, Ohio, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration or the grant of such franchise or right and exclusive of any value added thereto by reason of a monopoly or merger, and having taken into consideration the necessity of making reservations from income for surplus, depreciation and contingencies, and all other matters which were deemed proper, and having this day made and filed in writing its findings of fact herein, the Commission further finds:

(1) That the rates and charges fixed and prescribed by said ordinance, as follows, to-wit:

| | |
|---|---|
| First 400 cubic feet or less | 90¢ |
| Next 2600 cubic feet | 75¢ per M. C. F. |
| Next 7000 cubic feet | 65¢ per M. C. F. |
| Over 10,000 cubic feet | 60¢ per M. C. F. |

are unjust and unreasonable and ought not to be ratified and confirmed, and that just and reasonable charges should be substituted therefor;

(2) That the rates and charges following, to-wit:

| | |
|---|---|
| 400 cubic feet or less used per month | $1.00 |
| Next 2600 cubic feet used per month | 95¢ per M. C. F. |
| Next 3500 cubic feet used per month | 85¢ per M. C. F. |
| Next 3500 cubic feet used per month | 80¢ per M. C. F. |
| Over 10,000 cubic feet used per month | 75¢ per M. C. F. |
| House heating (as defined by company's schedule on file) | 60¢ per M. C. F. |

[fol. 137] are just and reasonable rates and charges for the service supplied by the appellant in the city of Kenton, Ohio, and

(3) That the gross and net revenues derived by the said West Ohio Gas Company from the furnishing of natural gas for public and private consumption in the city of Kenton, the rates and charges herein found by the Commission to be just and reasonable, will be sufficient to yield the said West Ohio Gas Company a reasonable compensation for such service.

It is, therefore,

Ordered, That the rates and charges hereinbefore found and determined by this Commission to be just and reasonable for the furnishing of natural gas by the said West Ohio Gas Company for public and private consumption within the city of Kenton, Ohio, be, and hereby they are substituted for the rates and charges fixed by the said Ordinance, which the Commission has found to be unjust and unreasonable.

And the Commission having made inquiry and investigation with respect to the ability of the West Ohio Gas Company to furnish natural gas for public and private consumption in the city of Kenton, Ohio, during the period fixed by said Ordinance and having found that the said West Ohio Gas Company is and will be able to furnish its said product in said city for said period, it is, therefore,

Ordered, That the rates, prices and charges not greater than nor in excess of the rates, prices and charges for natural gas furnished by the West Ohio Gas Company to the citizens and private consumers and to the public buildings, grounds, streets, lanes, alleys, avenues and market places in the city of Kenton, Ohio, for public and private consumption which the Commission has found herein to be just and reasonable be, and remain in force and effect for the period fixed and prescribed by said Ordinance and to and inclusive of the 16th day of February, 1933, and the said West Ohio Gas Company hereby is notified, directed and required to furnish its said product to the consumers thereof and for public and private business in the said city of Kenton for and during said period. It is, further,

Ordered, That the said West Ohio Gas Company be, and hereby it is notified, directed and required within thirty days herefrom to refund, in cash, to all consumers of natural gas

in the city of Kenton, Ohio, the excess in the charges which said consumers have paid for the service actually received from the effective date of the Ordinance herein complained of and appealed from to and inclusive of February 16th, 1933, based upon the billing of such service at the rates hereinbefore found and determined by the Commission to be just and reasonable. It is, further,

Ordered, That jurisdiction of this proceeding be, and [fol. 138] hereby is retained for the purpose of auditing the report of such refunders which the said West Ohio Gas Company hereby is directed to make immediately upon the completion of the same.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Charles F. Schaber, Frank W. Geiger, Commissioners.

Dated at Columbus, Ohio, this 10th day of March, 1933.

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[fol. 139] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

In re Appeal of West Ohio Gas Company from an Ordinance Passed by the City of Kenton, Ohio, July 16, 1929, Being Ord. No. 663, Fixing Maximum Price for Gas in the City of Kenton, Ohio, for a Period of 2 Years Commencing August 16, 1929

OPINION

History

This case involves an appeal by The West Ohio Gas Company from an Ordinance passed by the Council of the City of Kenton. The Ordinance was to become effective on August 1, 1929.

The Ordinance provided the folowing rates to be charged by The West Ohio Gas Company for gas sold in that City:

| | |
|---|---|
| First 400 cubic feet or less ..... | 90¢ |
| Next 2600 cubic feet ..... | 75¢ per M.C.F. |
| Next 7000 cubic feet ..... | 65¢ per M.C.F. |
| Over 10,000 cubic feet ..... | 60¢ per M.C.F. |

The rates in effect before the passage of the Ordinance, and which were continued in effect during the pendency of this appeal, are as follows:

| | |
|---|---|
| First 400 cubic feet or less | $1.25 |
| Next 2600 cubic feet | $1.10 per M.C.F. |
| Next 7000 cubic feet | $1.00 per M.C.F. |
| Over 10,000 cubic feet | 75¢ per M.C.F. |
| House Heating | 70¢ per M.C.F. |

Kenton has been involved in several rate cases before this Commission; in fact, the history of gas rate litigation in Kenton extends back over a considerable period of years.

The West Ohio Gas Company serves some 12 or 13 cities and towns in the Northwestern portion of Ohio and the present company is the result of purchases and mergers of several independent companies in 1924. The West Ohio Gas Company is a subsidiary of the Insull system.

[fol. 140] Gate Price for Gas

Natural gas is distributed in Kenton. The West Ohio Gas Company does not produce the gas but purchases it from The Ohio Fuel Gas Company.

The price paid for gas by The West Ohio Company is 55¢ per M.C.F. This is a matter of contract between the two corporations.

This Commission is of the opinion that a wholesale price of 55¢ for natural gas is too high. It seems especially true at the present time, when there is an abundance of natural gas available in Ohio. However, the Commission has no jurisdiction over this wholesale price of 55¢, by reason of the facts that:

(1) The West Ohio Gas Company and The Ohio Fuel Gas Company are not inter-related; they are separate and distinct entities.

(2) There is no evidence to indicate that the contract between these companies was not made at arm's length, without collusion or fraud.

(3) Under such circumstances, it has been held by Courts in Ohio and elsewhere that a regulatory Body, such as this Commission, cannot interfere with such contracts.

The Commission is helpless, therefore, to alter or in any way change the wholesale rate for natural gas in Kenton.

## Valuation

The present value of the property used and useful in the City of Kenton as of August 1, 1929, as made final by this Commission, was $189,844.81. That figure is considerably below the contentions as to the value of the property as made by the Company. The City has not protested the valuation fixed by the Commission, and has offered practically no evidence in dispute of the said valuation.

It is quite possible that a valuation made as of today would show a smaller sum than that indicated above, but it must be borne in mind that rate cases of this character are restricted to the date certain involved and, since that date certain herein is August 1, 1929, the valuation was necessarily priced as of that date.

## Amortization

It is the claim of the Company that the sum of $2,983.20, should be allowed for the amortization of the pipe line which runs from Kenton to Lima and other points, for the year ending August 1, 1929.

[fol. 141] This contention is based upon an earlier proceeding before this Commission in which it was felt that the supply of natural gas feeding into this pipe line would exhaust itself within a few years. At the time of that proceeding, a relatively small amount of discovery and development work had been done in connection with natural gas supplies in Ohio. Since that time, however, the supply of natural gas in Ohio has been increased many fold and there is now, according to the best beliefs, a supply of natural gas in this State which will last for many years to come. In addition, The Ohio Fuel Gas Company has direct connections with sources of supply in other states, so that there is no need for anxiety over the supply of natural gas.

In the Lima Gas Case, No. 5137, this Commission disallowed any claims for amortization of this pipe line for the reasons given above. It is now felt that there is no validity to the claim for amortization in this case. It is consequently disallowed.

## Depreciation

The Company claims that an annual allowance of $4,154.58 should be made for depreciation.

This amount, in the opinion of the Commission, is excessive.

There is allowed in this case the sum of $2,619.74 for depreciation upon the valuation announced above. In other words, 1.4 percent of the present value of the depreciable property used and useful in Kenton on August 1, 1929, is considered by this Commission to be sufficient for depreciation purposes.

## Revenues and Expenses

On Page 1, of Company Exhibit 102, it is set out, without refutation by the city, that the Company enjoyed a Gross Revenue of $84,787.36 from its operations, excluding merchandising activities, in Kenton for the year ending August 1, 1929.

Below are operating expenses for the year in question as claimed by the Company:

### Operating Expenses

| | Year ending Aug. 1, 1929 |
|---|---|
| Natural Gas Purchased | $38,674.35 |
| Distribution Expenses | 3,478.21 |
| Commercial Expenses | 3,155.67 |
| New Business Expenses | 1,148.49 |
| General & Miscellaneous Expenses | 10,979.63 |
| Indirect Charges to Construction (Red) | 215.56 |
| Retirement Allowance | 4,154.58 |
| [fol. 142] | |
| Allowance for Amortization of Pipe Line | 2,983.20 |
| Real and Personal Property Taxes | 2,538.15 |
| State of Ohio—Excise Tax | 1,226.31 |
| Tax for Maintenance of Public Utilities Commission | 47.84 |
| Federal Income Tax | 1,809.00 |
| Uncollectible Accounts | 485.65 |
| Total Cost of Operation | $70,465.52 |

The City did not present figures purporting to show revenues and expenses of the Company.

It is noted that the total expenses claimed by the Company for the year ending August 1, 1929, are $70,465.52.

As shown by the following figures, the Commission is of the opinion that $59,438.10 suffices for total expenses of

the Company in Kenton for the year ending August 1, 1929:

**Expenses**

| | |
|---|---|
| Natural Gas Purchased | $36,717.51 |
| Distribution Expense | 3,478.21 |
| Commercial Expense | 3,155.67 |
| New Business Expense | 1,148.49 |
| General and Miscellaneous Expense | 6,556.26 |
| Indirect Charges to Construction (Red) | 215.56 |
| Depreciation | 2,619.74 |
| Real & Personal Property Taxes | 2,538.15 |
| Ohio Excise Tax | 1,144.62 |
| P. U. C. O. Tax | 47.84 |
| Federal Income Tax | 1,751.52 |
| Bad Debts | 485.65 |
| Total Expenses | $59,438.10 |

Greater detail of the revenues and expenses as found by the Commission are contained in Exhibit "A" attached hereto and made a part of this opinion.

It is at once seen that the principal points of difference between the Company's figures and those of the Commission are:

(1) Natural Gas Purchased:

A check of the amount of gas purchased by the Company for its Kenton operations and the amount sold to consumers shows a loss in gas of almost 10 percent. The Commission feels that a 5 percent loss in the distribution of gas is adequate and has consequently reduced the purchased gas expense accordingly, making the figure applicable in this [fol. 143] case $36,717.51 as against the claim of the Company of $38,674.35.

(2) The general and miscellaneous expense for Kenton has been reduced to the figure of $3.39 per customer as is shown by the annual reports, made a part of the record of this Case on the Commission's own motion, to have been the experience of the entire West Ohio Gas Company for the year ending August 1, 1929.

(3) The difference between the Commission and the Company relative to depreciation has been discussed above.

(4) The Company claims that $1,226.31 was paid in Excise Tax to the State of Ohio for the year ending August 1, 1929. In view of the fact that this tax was at that time 1.35 percent of the Gross Revenue, it is at once seen that the amount should be $1,144.62 as shown above.

(5) Federal Income Tax:

The Company claims that Kenton's portion of Federal Income Tax for the year ending August 1, 1929, should be $1809.00, but it is noted from the annual reports of the entire West Ohio Gas Company that the income for the entire Company, before Federal Income Tax, was $128,-200.89. The income from Kenton before Federal Income Tax, was $16,130.84 (as shown in Company Exhibit 102) or 12.58 percent of the earnings of the entire Company. In view of the fact that the Federal Income Tax is allocated to the various operating companies of the system, it is at once obvious that Kenton should pay its proportionate share of the income tax, which should be $1,751.52 for the year ending August 1, 1929, inasmuch as the entire Company would have paid $13,923.02 in income tax for the same year.

Net Earnings

It is seen, then, that net earnings of the Company in Kenton as calculated by the Commission, amounted to $25,-349.36 for the year ending August 1, 1929.

This represents a return of 13.35 percent upon the then present value of the property used and useful in Kenton.

Such a return is excessive.

Return Allowed

The Commission feels that a return of 6 percent is ade-[fol. 144] quate upon this property. This thought is bolstered by the feeling that the Accounting System of this Company does not permit of a clear-cut separation of the operating figures of the various Companies involved, and it is also furthered by the feeling that ample latitude has been allowed in the matter of maintenance and other expenses.

Excessive Earnings

The Commission now finds that the sum of $13,958.67 represents the amount earned in excess of what is herein

considered a fair return for the year ending on August 1, 1929.

In view of the fact that the same rate has continued in effect until the present time, it is at once seen that refunds to Kenton consumers for the years subsequent to August 1, 1929, will probably be in order, but the amount of such refunds cannot be stated until a study of actual consumption subsequent to the date certain is made.

## Rates

Any schedule of rates fixed in this case must provide a minimum of $70,828.95 in gross revenue to the Company. That amount will take care of the operating expenses of $59,438.10, and provide a 6 percent return ($11,390.69) upon the valuation.

As noted before, the rates in effect up to the present time provided $84,787.36 in gross revenue, which amount is, in the opinion of this Commission, excessive.

The rates set out in the Ordinance above referred to would, according to the table of consumption of gas prepared for consideration in this case, yield $58,496.13, obviously an inadequate amount.

It is therefore apparent that the Ordinance rates cannot be sustained.

The Commission has established the following rate schedule:

| | |
|---|---|
| 400 Cubic Feet or less used per month | $1.00 |
| Next 2600 Cubic Feet used per month | 95¢ per M. C. F. |
| Next 3500 Cubic Feet used per month | 85¢ per M. C. F. |
| Next 3500 Cubic Feet used per month | 80¢ per M. C. F. |
| Over 10,000 Cubic Feet used per month | 75¢ per M. C. F. |
| House Heating (as defined by Company's schedule on file) | 60¢ per M. C.F. |

[fol. 145] The application of these rates to the table of consumption referred to above would produce a minimum of $70,850.42 in Gross Revenue. In addition, there is the possibility that the Company would receive a few hundred dollars from consumers who have meters but who use no gas. That amount is very limited, however, and would not affect rates to any visible extent.

The Commission, therefore, fixes the above rates for gas in the City of Kenton. The said rates are applicable to the

period involved in the Ordinance referred to above and, also, to that period subsequent to the expiration of the said Ordinance to the effective date of the Order to be issued by this Commission in this proceeding.

Effect of New Rates

The rates herein fixed will effect a saving to the consumer of 34¢ for the first thousand cubic feet.

Upon the understanding that the average consumption in Kenton is around 4,000 cubic feet per month, the new rates will effect a saving of .79 per month on the average bill, or $9.48 per year.

It is noted further that in addition to the reduction of rates, the Commission has seen fit to break down the third step in the old rates. That step involved the consumption of 7,000 cubic feet of gas, and under the rates herein established, there will be two steps of 3500 cubic feet each, thereby bringing the smaller consumers within range of lower prices per M. C. F. of gas used.

An order will issue pursuant to the findings in this opinion.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Charles F. Schaber, Commissioner; Frank W. Geiger, Commissioner.

Dated at Columbus, Ohio, this 10th day of March, 1933.

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[fol. 146] EXHIBIT "A" TO OPINION

West Ohio Gas Company

Kenton Case No. 5666

Revenues and Expenses

Revenues

| | Year ended 8/1/29 |
|---|---|
| Gas Sales in M. C. F. | 63,421.2 |
| Gross Revenue | $84,787.36 |
| Average Revenue per M. C. F. | 1.337 |

Expenses

| | |
|---|---|
| Natural Gas Purchased (A) | $36,717.51 |
| Distribution Expense | 3,478.21 |
| Commercial Expense | 3,155.67 |
| New Business Expense | 1,148.49 |
| General and Misc. Expense (B) | 6,556.26 |
| Indirect Charges to Construction (Red) | 215.56 |
| Depreciation (C) | 2,619.74 |
| Real & Personal Property Taxes | 2,538.15 |
| Ohio Excise Tax (D) | 1,144.62 |
| P. U. C. O. Tax | 47.84 |
| Federal Income Tax (E) | 1,751.52 |
| Bad debts | 485.65 |
| Total Expenses | $59,438.10 |
| Net Income | $25,349.36 |
| Return on Valuation ($189,844.81) | 13.35% |
| Excess over 6% Return ($11,390.69) | $13,958.67 |

(A) Allocation set up by Company shows 10% unaccounted for gas. This figure is reduced to 5% and produces result shown above.

(B) General and Miscellaneous Expense for entire company for year ended 8/1/29 would have been about $3.39 per customer. That basic amount is used in this case and produces amount shown above.

(C) Depreciation is based upon 1.4% of present value of depreciable property ($187,135.62) used and useful in Kenton, in accordance with method followed in Lima Case #5137.

(D) The excise tax was 1.35% of Gross Revenue. The Company claims a Gross Revenue of $84,787.36 from Kenton; consequently this excise tax should be $1,144.62 for the year ended 8/1/29.

(E) Entire West Ohio Gas Co. earned (by computation based upon annual reports) $128,200.89 after all charges except Federal Income Tax. Income from Kenton (before Income Tax) was $16,130.84 (Exhibit #102) or 12.58% of earnings of entire company. Entire Company paid Income Tax (by computation) of $13,923.02. Kenton's share (12.58%) is $1,751.52.

[fol. 147] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

[Title omitted]

PETITION FOR REHEARING FROM FINAL ORDER IN THE ABOVE ENTITLED CAUSE FIXING THE RATES TO BE CHARGED BY WEST OHIO GAS COMPANY FOR GAS UTILITY SERVICE RENDERED WITHIN THE CITY OF KENTON, OHIO

West Ohio Gas Company, an Ohio corporation, petitioner in the above entitled cause, hereby petitions The Public Utilities Commission of Ohio for a rehearing on the final order entered in the above entitled cause on March 10, 1933, for the purpose of fixing rates to be charged for gas utility service rendered by petitioner within the city of Kenton, Ohio, and prays that said order be vacated and set aside, and that after said rehearing has been held this commission enter an order in the above entitled cause finding that the rates now being charged by petitioner for said gas utility service have not heertofore, do not now and will not hereafter produce revenues greater than the revenues required in order that petitioner may earn a fair return on the fair value of its property devoted to said gas utility service and that said rates should not be decreased.

In support of this petition for rehearing, petitioner sets forth the following grounds on which, inter alia, petitioner considers that said final order of March 10, 1933, and the decision of the Commission in this cause is erroneous, improper, arbitrary, unlawful and unreasonable, and is not based upon the facts as established by the evidence introduced in this cause, and/or that the rates fixed in said [fol. 148] final order are unlawful, unreasonable, inadequate and confiscatory:

1. The final order of the commission entered on March 10, 1933, in this cause, and many of the findings of the commission contained in the decision in this cause are contrary to the weight of, against, and not supported by, the evidence introduced at the hearings held in this cause.

2. The rates fixed by the commission in said final order as the rates to be charged by petitioner for gas utility

service rendered within said city of Kenton, Ohio, from and after August 16, 1929, will not produce adequate revenues to pay the reasonable operating expenses of rendering said service and to yield for petitioner a fair, adequate and compensatory return either on the fair value of the property devoted by petitioner to said public service or upon the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

3. If said rates provided for by the said final order of March 10, 1933, as afore stated, be fixed as the rates to be charged by petitioner for such gas utility service during the period from August 16, 1929 to December 31, 1929, petitioner would not secure from such service rendered during the year 1929 sufficient revenues to pay the reasonable costs of rendering said service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service during said period or on the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

4. If the said rates provided for by the said final order of March 10, 1933, as afore stated, be fixed as the rates to be charged by petitioner for such gas utility service during the year 1930, petitioner would not secure from such service rendered during said year 1930 sufficient revenues to pay the reasonable costs of rendering said service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service during said period or on the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated Jan-
[fol. 149] uary 27, 1932.

5. If the said rates provided for by the said final order of March 10, 1933, as afore stated, be fixed as the rates to be charged by petitioner for such gas utility service during the year 1931, petitioner would not secure from such service rendered during said year 1931 sufficient revenues to pay the reasonable costs of rendering said service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service during said period, or on the value of said

property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

6. If the said rates provided for by the said final order of March 10, 1933, as afore stated, be fixed as the rates to be charged by petitioner for such gas utility service during the year 1932, petitioner would not secure from such service rendered during said year 1932 sufficient revenues to pay the reasonable costs of rendering said service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service during said period, or on the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

7. If said rates fixed by this commission in said order of March 10, 1933, as afore stated, are permitted to remain in effect, petitioner will not be able to secure from such gas utility service rendered and to be rendered by it during the year 1933 and thereafter, sufficient revenues to pay the cost of rendering such service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service or on the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

8. This commission in fixing said rates, as afore stated, and in finding that said rates would produce adequate revenues to pay the cost of rendering said service and yield a fair, adequate and compensatory return to petitioner, has improperly ignored the facts established by the evidence [fol. 150] in this case and/or has arbitrarily failed or refused to give due and proper weight to such evidence.

9. The commission in fixing rates in this cause, and in finding that said rates fixed would produce adequate revenues to pay the cost of gas utility service rendered by petitioner within said city of Kenton and to yield petitioner a fair return upon the fair value of the property devoted to such service, has improperly ignored the evidence as to cost of such service and has arbitrarily reduced below the actual

cost thereof certain items of operating expenses incurred by petitioner in rendering such service.

10. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily and without any evidence to sustain such action, eliminated from the cost of rendering service, the annual allowance of $2,983.20 heretofore authorized by this commission for amortization of the gas transmission main now being used in rendering gas utility service to consumers within said city of Kenton.

11. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily refused to allow as an item of operatting expenses an adequate amount for retirement reserve, which allowance should have been an amount not less than the sum of $4,154.58 per annum claimed by petitioner.

12. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded as an operating expense of petitioner a part of the actual cost to petitioner of natural gas purchased by it for use in rendering gas utility service within said city of Kenton.

13. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded items of expense incurred by petitioner on unaccounted for gas losses actually suffered by petitioner in rendering gas utility service within said city of Kenton.

14. The commission in fixing rates in this cause, and in [fol. 151] finding that said rates so fixed are adequate and compensatory, has arbitrarily disregarded as an operating expense a substantial part of the general and miscellaneous expense actually incurred by petitioner in rendering gas utility service within said city of Kenton.

15. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded the evidence in this cause and failed to include in operating expense, amounts expended by petitioner in connection with appeals from rate ordinances passed by said city of Kenton, and has arbi-

trarily failed and refused to consider said item of expense in determining the net return earned by petitioner under existing rates or under the rates fixed by this commission.

16. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has erroneously reduced the item of expense for excise tax paid to the state of Ohio.

17. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded the fact that, commencing with the year 1932, the excise tax which petitioner is required to pay the state of Ohio in connection with rendering gas utility service within said city of Kenton has been increased from 1.35% per annum of the revenues derived from such service to 2.35% per annum of such revenues.

18. The commission in fixing rates in this cause, and in finding that said rates are adequate and compensatory, has erroneously reduced the item of expense of petitioner for federal income tax.

19. Any order of the commission fixing rates to be charged by respondent for gas utility service rendered by petitioner within said city of Kenton on such a basis as will not permit petitioner to earn, during each and every year of the ordinance period, an annual return of at least 8% of the fair value of the property devoted by petitioner [fol. 152] to such service is arbitrary, unreasonable and unlawful, is in conflict with the evidence in this cause, and results in the confiscation of petitioner's property.

20. The finding of the commission that rates for gas utility service within said city of Kenton should be fixed on a basis that would permit petitioner to earn annually only 6% on the value of its property devoted to such service, and that a return at such rate would be a fair, reasonable, adequate and non-confiscatory return to be earned by petitioner in connection with such service during the period covered by said ordinance of July 16, 1929, and each of the years within said period, is arbitrary, erroneous and unlawful, is not supported by the evidence in this cause, and results in the confiscation of the property of petitioner devoted to such service. The evidence in this cause estab-

lishes that, if confiscation is to be avoided, the rates which have actually been charged by petitioner during the pendency of this cause, cannot be reduced for said ordinance period or any part thereof unless and except to the extent that during such time or part thereof petitioner has earned from such service a return at a rate greatly in excess of said 6% per annum on such property—to-wit in excess of 8% per annum.

21. The findings of the commission as to the amount of net earnings of petitioner for the twelve month period ending August 1, 1929, and as to the per centum of return earned during said period upon the value of property devoted by petitioner to gas utility service within said city of Kenton, and that an excessive rate of return was earned by petitioner during said period and each of said findings are arbitrary and erroneous, and not based upon the evidence in this cause.

22. The finding of the commission that the question whether any refunds, for a period subsequent to August [fol. 153] 16, 1929, were to be made by petitioner to consumers of gas utility service rendered by it within said city of Kenton, should be determined by consideration of the earnings of petitioner from such service during the twelve month period ending August 1, 1929, is erroneous.

23. The commission has failed to determine the net return which would be earned by petitioner if the rates fixed by said order of March 10, 1933 are made applicable to gas utility service rendered by petitioner within said city of Kenton during the period from August 16, 1929 to December 31, 1929, and during the calendar years 1930, 1931 and 1932, and each of said years, or to estimate what the effect of said rates will be if made applicable to the calendar year 1933 and subsequent years. Such a finding, if based upon the evidence introduced in this cause, would necessarily show that if said rates are put in effect, petitioner would not and will not in said years, or any of them, obtain a reasonable return upon the fair value of its property devoted to said service and will show that the said rates fixed by this commission will result in the confiscation of petitioner's property during said period and during each year of said period. Petitioner desires an opportunity to introduce in evidence in this cause tabulations showing such calculations and estimates.

23a. The commission has improperly failed and refused to consider the evidence as to revenues and expenses during the period subsequent to the year ending August 1, 1929. It has arbitrarily determined the issues before it in this case on the basis of figures showing revenues and cost of service for the said twelve-month period ending August 1, 1929, and has ignored and disregarded the evidence introduced in said cause as to revenues and cost of service during the period for which rates are to be fixed in this cause.

23b. The commission has found that the rates ordered in [fol. 154] effect by said order of March 10, 1933 will pay all operating expenses incurred by petitioner in rendering gas utility service in said city of Kenton and provide a 6% return upon the value of the property devoted to said service as found by the commission. The undisputed evidence in this case clearly establishes that such conclusion is incorrect and that said rates would not in any year during which they have been ordered effective have produced sufficient revenue to pay such operating expenses and provide even such an inadequate return.

24. The commission in entering its said final order in this cause has ignored the evidence introduced by petitioner as to its revenues and expenses for the calendar years 1929, 1930 and 1931 and the fact that even under existing rates petitioner's revenues for the years 1930 and 1931 were less, and its net earnings available for return for said two years were less, than for the twelve-month period ending August 1, 1929.

25. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory for the period from August 16, 1929 to February 16, 1933, has arbitrarily ignored the fact that the average annual revenues derived and the average net return earned by petitioner from gas utility service within said city of Kenton during the period to which said rates would apply, is considerably lower than the revenues and net return earned by petitioner from such service during the twelve-month period ending August 1, 1929.

26. The commission has exceeded the authority granted it by law by attempting in this cause to fix a rate to be charged by petitioner for a period longer than the two-

year period named in said ordinance #663 of said city of Kenton appealed from, which period expired August 16, 1931. The commission has assumed to fix the rates which should have been charged by petitioner during the entire period from August 16, 1929 to February 16, 1933, and yet, has entirely ignored the facts in the record as to revenues derived and expenses actually incurred during said period. If the commission claims jurisdiction and power [fol. 155] to fix petitioner's rates for a period longer than the duration of the said ordinance of said city of Kenton, then petitioner asks that it be permitted to introduce additional evidence as to its expenses of operation and its revenues derived from said service within said city of Kenton during the year 1932 and the first six weeks of the year 1933. Such additional evidence will show that the rates fixed by the commission in this cause are confiscatory rates for said period.

27. Under the order of the commission in this cause dated March 10, 1933 the property of petitioner devoted to rendering gas utility service within the said city of Kenton would be confiscated for the public use during the entire period subsequent to August 16, 1929 and during each and every year of said period.

28. The finding of the commission as to the amount of revenue which would be derived by petitioner under the rates fixed by said final order of March 10, 1933 for said utility service within said city of Kenton is erroneous, and is an amount greatly in excess of the actual revenues which would be derived by petitioner if said rates are placed in effect for the period extending from August 16, 1929 to February 16, 1933.

29. The finding of the commission that the rates provided for in its said final order of March 10, 1933 will produce for petitioner a minimum annual gross revenue of $70,828.95 is erroneous. Such rates will produce a much lower gross revenue for the years 1930, 1931 and 1932, and for the current year. Under existing rates, petitioner's gross revenue from gas utility service in said city of Kenton was but $72,278.21 for the year 1931 and but $66,743.09 for the year 1932, and the rates fixed by the commission would reduce these revenues by more than 15½%, and petitioner desires to show such of these facts as are not of record.

30. The finding of the commission that under the rates now in effect petitioner secures an excessive amount of revenue from gas utility service within said city of Kenton, is erroneous.

31. The order of the commission is erroneous in directing [fol. 156] petitioner to make to consumers of gas utility service rendered by petitioner within said city of Kenton, refunds equal to the difference between the respective sums paid by such consumers for such service rendered during the period from August 16, 1929 and February 16, 1933, and the amount which such respective consumers would have paid for such service if the rates fixed in said final order of March 10, 1933 had been in effect during such period.

32. The commission has ordered and directed petitioner to make refunds to consumers of gas utility service rendered by petitioner within said city of Kenton during the period from August 16, 1929 to February 16, 1933, but has failed to consider the evidence as to the actual earnings of petitioner during this period and each year of said period, and to determine therefrom by what amount, if any, the net return earned by petitioner from said service during each such year exceeded the amount which petitioner must have been permitted to earn if the confiscation of its property devoted to such service is to be avoided.

33. The commission has based its finding upon matters not in evidence in this cause.

34. The commission in its final order in this cause has wholly failed to give due weight or consideration to the evidence introduced in this cause.

35. The commission in entering its final order in this cause has ignored, and failed and refused to fix rates and to determine the matters at issue in accordance with, the principles established by the supreme court of the United States as applicable to such proceedings.

36. To permit the rates fixed by said order in this cause to stand as final would result in the confiscation of petitioner's property, in the denial to petitioner of the right to earn a fair return upon its property used and useful in the public service and to the denial to petitioner of due process of law—all in violation of the constitution of the United

States of America and of the constitution and laws of the [fol. 157] state of Ohio.

37. Since the termination of hearings in this cause, this commission has, under date of March 8, 1933, on its own motion ordered that the annual reports filed by petitioner with the commission for the years 1928, 1929 and 1930 be made a part of the record in this cause as Commission Exhibits 1, 2 and 3. Petitioner objects to such arbitrary placing of said reports in evidence as a part of the record in this case, unless there is also made a part of said record and placed in evidence by this commission the annual reports filed with this commission by petitioner for the years 1931 and 1932. The said reports for the years 1931 and 1932 were both on file with the commission at the time of the entry of its said order of March 8, 1933.

And petitioner further prays that the commission shall at once enter an order in this cause staying and postponing the enforcement of said order of March 10, 1933 entered in this cause, and providing further (a) that if a rehearing is refused in this cause the enforcement of said order shall be stayed and postponed for a period of at least thirty days after the commission has notified petitioner of its refusal to grant such rehearing, and (b) that if a rehearing is granted in this cause, as herein prayed, the enforcement of the final order in this cause shall be stayed and postponed until such reasonable time after said rehearing is held and [fol. 158] determined as the commission shall fix and determine in its final order in this cause.

And petitioner further prays for such other and further relief as may be meet.

West Ohio Gas Company, an Ohio Corporation, by (Signed) Emmett R. Curtin, President. (Signed) Chas. C. Marshall, (Signed) Cooke, Sullivan & Ricks, (Signed) H. O. Bentley, Attorneys for West Ohio Gas Company, Petitioner.

[fol. 159] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

[Title omitted]

ORDER DENYING PETITION FOR REHEARING

This day, this matter came on for further consideration upon the petition of appellant, West Ohio Gas Company, asking, for the reasons and upon the grounds set forth therein, a rehearing of said proceeding and an extension of the time within which refunds shall be made as directed by the order made and entered herein March 10, 1933.

The Commission, being fully advised in the premises, finds that sufficient cause has not been made to appear in said petition for a rehearing of said proceeding, or an extension of the time within which refunds shall be made. It is, therefore,

Ordered, That the petition of the appellant, West Ohio Gas Company, asking, for the reasons and upon the grounds set forth therein, a rehearing of said proceeding and an extension of the time within which refunds shall be made as directed by the order made and entered herein March 10th, 1933, be, and hereby it is, denied.

To which order of the Commission denying said petition, the said West Ohio Gas Company then excepted, here now excepts, and its exceptions here are noted of record.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 22nd day of March, 1933.

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[fol. 160] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

[Title omitted]

ORDER DIRECTING TRANSMITTAL OF RECORD

The West Ohio Gas Company, Plaintiff in Error, having appealed from the order of the Public Utilities Commission in Proceeding No. 5666 before said Commission, it is hereby

Ordered, That the original filings, the entries and orders of the Commission, a transcript of the docket entries and the proceedings and testimony adduced upon hearings before the Commission, together with the exhibits, be forthwith transmitted to the Clerk of The Supreme Court of Ohio.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners; David Shaw Archer, Assistant Secretary. (Seal.)

Dated at Columbus, Ohio, this 19th day of April, 1933.

Filed in the Supreme Court of Ohio, April 26, 1933. Seba H. Miller, Clerk.

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[fol. 161] Filed in the Supreme Court of Ohio, April 26, 1933

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

In re Appeal of The West Ohio Gas Company from Ordinance Passed by the City of Kenton, Ohio, July 16th, 1929, Ordinance No. 663, Fixing the Maximum Price to Be Charged for Gas in the City of Kenton, Ohio, for a Period of Two Years Commencing on the 16th day of August, 1929

DOCKET ENTRIES—Filed August 16, 1929

Appeal from ordinance No. 663 passed by the City of Kenton, Ohio, fixing maximum price to be charged for gas in City of Kenton, Ohio, for two-year period commencing August, 1929.

Attached to petition, Exhibit "A" copy of P. U. C. A. No. 2 cancelling No. 1, The West Ohio Gas Company; "B" Copy Ordinance No. 663; "C" Agreement, The West Ohio Gas Company and The Ohio Fuel Gas Company.

August 16, 1929—Filed, application fixing amount and conditions of Undertaking to be filed in order to collect rates for service under its P. U. C. O. No. 2, effective August 1, 1929.

August 16, 1929—Entry assigning hearings Wednesday, August 21, 1929, at 1:30 o'clock P. M. EST upon application for fixing amount and conditions of bond and Wednesday, September 25, 1929, at 10:00 A. M. EST upon complaint and appeal.

August 21, 1929—Called for hearing in re: fixing amount of bond to be filed. Filed by West Ohio Gas Company—Effect of Ordinance Rate on its Gross Revenue.

August 21, 1929—Entry fixing amount of bond at $40,000.00 with proper and adequate surety.

September 5, 1929—Filed transcript Proceedings and Testimony of hearing fixing amount of bond (August 21, 1929) 2p.

August 24, 1929—Resolution Board of Directors authorizing filing of surety bond in the sum of $40,000.00.

August 24, 1929—Filed Surety Bond in sum of $40,000.00 of The West Ohio Gas Company—United States Fidelity and Guaranty Company, surety, conditioned in conformity to law.

September 11, 1929—Entry approving bond in sum of $40,000.00.

[fol. 162] September 23, 1929—Upon Motion (Oral) of counsel for parties herein and good cause shown, assignment of hearing September 25, 1929, vacated and hearing reassigned for Thursday, October 24, 1929, at ten o'clock A. M. EST, Hearing Room. Notice given.

October 17, 1929—Upon application and good cause shown by appellant, hearing assignment October 24th, 1929, vacated and hearing reassigned for Monday, November 18, 1929, Hearing Room, at 1:30 o'clock P. M. Notice given.

November 13, 1929—Upon representation and showing by counsel for City of Kenton and consent of appellant, hearing assignment November 18, 1929, vacated and hearing reassigned for Monday, December 16, 1929, at 10:30 o'clock A. M., Hearing Room. Notice given.

December 9, 1929—Upon application counsel for appellant and consent of counsel for respondent and good cause shown, hearing assignment December 16, 1929, vacated and hearing reassigned for Thursday, January 9th, 1930 at ten o'clock A. M., Hearing Room. Notice given.

December 31, 1929—Upon application of appellant and good cause shown, hearing assignment January 9th, 1930,

vacated and said hearing reassigned for Wednesday, February 5th, 1930, at ten o'clock A. M. EST, Hearing Room. Notice Given.

January 21, 1930—Upon application of appellant and by reason of the serious illness of remaining counsel, hearing assignment February 6, 1930, hereby is vacated and such hearing reassigned for Wednesday, April 2, 1930, at 10:00 A. M. EST, Hearing Room. Notice given.

April 3, 1930—Called for hearing (a day late because of Lima hearing) heard. Exhibits filed: Company: 1—Report No. 2805 Kenton District Gas Property as of September 30, 1929 (2 and 3 to be furnished) 4—Estimate Cost of Reproduction new, less accrued depreciation physical property (Day & Zimmerman, Engineers).

April 22, 1930—Filed Transcript Proceedings and Testimony 132 pages.

May 3, 1930—Filed Exhibits 2 and 3 (Company) Net additions to Capital and Detail Unit Prices Kenton District—West Ohio Gas Company.

May 6, 1930—Filed Summary of Reproduction Estimates Kenton District—West Ohio Gas Company.

August 29, 1930—Filed report of engineer on Tentative Valuation.

September 14, 1930—Filed Report of Chief Engineer on Tentative Valuation.

September 15, 1931—Finding and Order fixing Tentative Valuation as of August 15, 1929, on property used and useful in furnishing gas service for City of Kenton, by The West Ohio Gas Company. Copy served upon Company's Counsel, Attorney for and Mayor of Kenton, Ohio, by registered mail.

October 14, 1931—Filed Protest vs. Tentative Valuation of Commission by West Ohio Gas Company.

[fol. 163] October 14, 1931—Entry assigning protest vs. Commission's Tentative Valuation assigned for public hearing Tuesday, December 8, 1931, at ten o'clock A. M. Hearing Room. Notice given.

November 28, 1931—Upon Commission's motion, hearing assignment of protest vs. Tentative Valuation December 8, 1931, at ten o'clock A. M. December 8, 1931, vacated and hearing reassigned for Thursday, January 21st, 1932, at ten o'clock A. M., Hearing Room. Notice given.

January 6, 1932—Filed Supplemental Bond in sum of $54,000.00 with Midland Utilities Company as Surety with Certified Copy of Resolution Board of Directors authorizing. Entry of Commission approving.

January 21, 1932—Hearing on Protest Tentative Valuation. Exhibits filed: Commission's: Report of Engineer, dated August 29, 1931; 2—Report of Chief Engineer to Superintendent of Investigation dated September 14, 1931; Company's: 100 Supplemental Summary Reproduction Cost new as of August 1, 1939, Kenton; 101, Dittoe, Reproduction Depreciated as of August 1, 1929.

January 27, 1932—Finding and Order Fixing Final Valuation of several classes and kinds of property of West Ohio Gas Company, used and useful for the convenience of the public for furnishing natural gas service to its consumers and the public in the City of Kenton and said property as a whole, as of August 15, 1929. Grand totals of which are: Reproduction Cost New, $229,783.37; Depreciation $39,926.81 and Present Value $189,856.56. Parties each except, exceptions noted.

January 30, 1932—Filed transcript proceedings and Testimony, 22 pages.

February 19, 1932—Filed Petition for Rehearing as to Final Valuation of property West Ohio Gas Company—gas utility service, City of Kenton, Ohio, by The West Ohio Gas Company.

February 25, 1932—Entry denying Petition for Rehearing, West Ohio Gas Company, Final Valuation of property, exceptions West Ohio Gas Company taken and noted.

March 28, 1932—Entry assigning proceedings for hearing upon subject of receipts, expenditures and rate of return, Tuesday, April 26, 1932, at ten o'clock A. M. Hearing Room. Notice Given.

March 31, 1932—Filed, Motion of appellant for vacation of hearing assignment April 26, 1931, because of conflict in dates with assignment in United District Court.

April 2, 1932—Entry vacating hearing assignment April 26, 1932, and reassigning proceeding for Wednesday, May 11, 1932, at ten o'clock A. M., Hearing Room. Notice given.

May 7, 1932—Upon application of Solicitor City of Kention and consent of counsel for appellant, hearing assignment, May 11, 1932, vacated and proceeding reassigned for

Tuesday, June 7, 1932, at ten o'clock A M. Hearing Room, at ten o'clock A. M., E. S. T. Notice given.

[fol. 164] May 16, 1932—Filed affidavit of B. P. Shearon, Secretary of Midland Utilities Company. (See 5137 Lima case.)

June 7 & 8, 1932—Further hearing. Exhibits filed: 102—Operating Expenses 1929-1931 and 103—Cost of Money. Hearing continued to Friday, July 1st, 1932, at 10:00 A. M. Notice given.

June 28, 1932—Filed transcript of Proceedings and Testimony hearing June 7 and 8. P. 156-187.

July 1, 1932—Recessed to Tuesday, July 19, 1932, at ten o'clock A. M., hearing room.

July 12, 1932—Filed transcript Proceedings and Testimony of hearing July 1, 1932.

July 19, 1932—Hearing on Rates concluded.

July 28, 1932—Filed transcript Proceedings and Testimony 40 p. ending with p. 228.

March 8, 1933—Upon Commission's own motion and for the purpose of completing record, it is hereby ordered that annual reports of The West Ohio Gas Company for the years 1928, 1929, and 1930, hereby are introduced in evidence and made part of the record as Exhibits 1, 2, 3, Commission's.

March 10, 1933—Finding and Order of the Commission fixing rates for natural gas service by The West Ohio Gas Company in the City of Kenton, Ohio:

| | |
|---|---|
| 400 Cub. ft. or less used per month | $1.00 |
| Next 2600 ft. used per month | .95¢ per M. C. F. |
| Next 3500 ft. used per month | .85¢ per M. C. F. |
| Next 3500 ft. used per month | 80¢ per M. C. F. |
| Over 10,000 ft. used per month | .75¢ per M. C. F. |
| House Heating (as described by Company's Schedule on file) | .60¢ per M. C. F. |

as just and reasonable rates in lieu of rates prescribed by Ordinance appealed from:

| | |
|---|---|
| First 400 Cu. Ft. or less | .90¢ |
| Next 2600 Cu. Ft. | .75¢ per M. C. F. |
| Next 7000 Cu. Ft. | .65¢ per M. C. F. |
| Over 10000 Cu. Ft. | .60¢ per M. C. F. |

Rates found by the Commission to be just and reasonable to remain in force and effect for period fixed and prescribed from by said Ordinance to and inclusive of 16th day of February, 1933, and directing West Ohio Gas Company to refund, in cash, to all consumers of gas in the city of Kenton the excess in charges which consumers have paid for service actually received from effective date of ordinance appealed from to and inclusive of February 16, 1933, upon billing of such service at rates found to be just and reasonable. Jurisdiction retained for purpose of auditing report of refunders to be made by West Ohio Gas Company immediately upon completion of same.

Copy served upon parties in interest.

[fol. 165] March 18, 1933—Filed by West Ohio Gas Company—Petition for Rehearing on Final Order Fixing Rates to be charged by The West Ohio Gas Company for gas utility service within the City of Kenton and for stay of enforcement of order in re: refunding.

March 22, 1933—Entry of Commission denying petition for rehearing and extension of time within which refunds shall be made; exception of West Ohio Gas Company taken and noted.

March 31, 1933—Filed in Supreme Court, Proceeding No. 24105—Petition in Error West Ohio Gas Company vs. P. U. C. O.; Statement showing interested Parties; Waiver Service of Summons in Error; Notice of Application for Stay of Execution and Application for Stay of Execution.

April 25, 1933—Entry transmitting papers to the Clerk of The Supreme Court of Ohio.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners; David Shaw Archer, Assistant Secretary. (Seal.)

Dated at Columbus, Ohio, this 25th day of April, 1933.

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[fol. 166] Certificate of transmittal omitted in printing.

[fol. 167] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

In the Matter of the Appeal of West Ohio Gas Company from the Ordinance Passed by the City of Kenton, Ohio, July 16, 1929, Ordinance No. 663, Fixing the Maximum Price to Be Charged for Gas in the City of Kenton, Ohio, for a Period of Two Years Commencing on the 16th Day of August, 1929

**Statement of Evidence**

Proceedings and Testimony

Before Honorables Frank W. Geiger, Chairman; John W. Bricker and William Klinger, Public Utilities Commissioners, on the 3rd day of April, 1930

Present: Messrs. H. O. Bentley, Lima, Ohio, and E. W. Hebel, Chicago, Illinois, on behalf of the appellant, Ohio Gas Company. Messrs. John H. Pfeiffer, City Solicitor; L. B. Brown and Paul T. Mahon, Kenton, Ohio, on behalf of the City of Kenton.

Be it remembered that on the hearing of the above entitled matter before the Public Utilities Commission of Ohio, the appellant, West Ohio Gas Company, to maintain the issues on its part to be maintained, offered and introduced in testimony on its behalf, the following evidence, to-wit:

[fol. 168] Morning Session

April 3, 1930.

COLLOQUY

Chairman Klinger: Is everybody ready?

Mr. Bentley: We are ready.

Mr. Mahon: We are ready, Your Honor.

Commissioner Klinger: This is on the introduction by the company?

Mr. Bentley: This is the opening of the Kenton case. I assume the burden is on us.

Mr. Brown: It is to be heard, as I understand it, Mr. Bentley, upon the report of the company's engineers on the valuation of the company's property.

Mr. Bentley: Yes.

Commissioner Klinger: Proceed. Let us have the appearances.

Mr. Bentley: H. O. Bentley and E. W. Hebel for the Ohio Gas Company.

Mr. Pfeiffer: John H. Pfeiffer, City Solicitor, Kenton. Since the proceedings have begun, I have become city solicitor. As associate counsel, Paul T. Mahon and L. B. Brown.

Mr. Bentley: This is the matter of the appeal of the West Ohio Gas Company from an ordinance of the City of Kenton passed in July, 1929. The company is now collecting under its former schedule under a bond which was fixed and approved by this Commission.

Commissioner Klinger: Is this one of the old Pence cases yet?

Mr. Bentley: Yes, it is an appeal from an ordinance. I will say to the Commission in accordance with our discus- [fol. 169] sion yesterday we will make this as fast as we can, and yet it is necessary to go to some detail in order to make up the record.

Frank L. Pringle, called on behalf of the appellant, being duly sworn, testified as follows:

Examined by Mr. Bentley:

Q. State your name?
A. Frank L. Pringle.
Q. Where do you live?
A. Lima, Ohio.
Q. What connection, if any, have you with the West Ohio Gas Company?
A. Assistant secretary and assistant treasurer.
Q. How long have you been so connected?
A. Since October 30th, 1911.
Q. What is the fact as to your being in actual active charge of the office and the office end of the business of that organization?
A. I am.
Q. And where are the official records and evidences of title and inventories of the company kept?
A. In the office of the company in Lima.

Q. And in whose charge?

A. In my charge.

Q. I will ask you whether or not you are familiar with the inventories and books of inventory and records, maps and various evidences of title of the physical property itself of the West Ohio Gas Company in Kenton?

A. I am.

Q. State whether or not the city of Kenton is one of the [fol. 170] properties belonging to the West Ohio Gas system?

A. It is.

Q. Who has charge of the records and files?

A. They are kept in the office of the company at Lima.

Q. How are the records and files so far as inventories and listing of locations of property kept up?

A. They are kept up to date.

Q. Do you keep a detailed record at Lima of inventory of the property?

A. Yes, sir.

Q. And in what form is the evidence of title, locations and character and kinds of various properties, physical properties kept; what I mean is do you have a map of the property?

A. Yes, we have a map.

Q. And do you have a map of the Kenton property?

A. We do.

Q. And what does that map show?

A. The map shows the locations and sizes of the underground property of the company located at Kenton.

Q. And in case of additions or subtractions from that physical property what, if any, change is made in the map?

A. The corrections are made on the map at the time.

Q. Either putting in or taking out?

A. Yes, sir.

Q. So that if I understand you that map, at all times, within a comparatively up to date—within a day or two, shows additions or deductions or subtractions from the property?

A. It does.

Q. And that is true of the Kenton district?

A. Yes, sir.

Q. How far is Kenton from Lima?

A. About 28 miles.

Q. And what is the source of supply at Kenton of fuel?

A. We purchase natural gas distributed in Kenton from [fol. 171] the Ohio Fuel Gas Company.

Q. How is it delivered to Kenton?

A. It is delivered to our line at a point 15 miles east of Kenton.

Q. You distribute entirely natural gas in Kenton?

A. We do.

Q. Nothing but natural gas involved in this hearing?

A. That is true.

By Chairman Geiger:

Q. From Ohio Fuel?

A. Ohio Fuel Gas Company.

By Mr. Bentley:

Q. In addition to the map to which you referred, what other system of keeping a record of additions, improvements and replacements have you?

A. We keep other book and card records of the property in the office as well.

Q. Of the services installed or taken out?

A. Yes, sir. We have a card record of all services.

Q. And under whose charge and in whose custody are those records?

A. They are kept in the office in Lima.

Q. What is the fact as to its being accurate and kept up to date day by day?

A. They are so kept.

Q. I will ask you whether or not you are familiar with those records?

A. I am.

* * * * * * *

[fol. 172] Cross-examination:

Q. How many customers have you, Mr. Pringle, in the Kenton district at this time?

A. Something over 1800; I don't recall the exact number.

* * * * * * *

[fol. 173] Q. Yes. You say that soon after the company acquired this physical property in the Kenton district that

it began a program of rehabilitating I think you called it, or [fol. 174] improvement of the lines?

A. Yes, sir.

Q. What was done in that connection?

A. Well, I can't give you as much detail as could our superintendent who has charge of that district.

Q. No, but in a general way.

A. In a general way I know we have uncovered some lines that had holes in them with a wooden plug or a broom handle stuck in there, that the predecessor company used that method of stopping leaks or holes in the line; and we found a great number of lines which, as I understand, go through alleys, and the occupants of the premises dumped ashes in the rear of the lot and had a tendency to deterioriate the pipe, and we found just lots of conditions that we thought wasn't good gas practice, and we corrected all of those conditions. In some cases we extended lines and increased the size of lines, and in a number of instances we found maybe several customers on one service line, and they hadn't been receiving good service on account of the number of people to the size line that they were, and those conditions were corrected. We took out all meters and tested the meters to see whether or not they registered accurately, and in fact we gave the property a general going over.

Q. Well, in view of the fact that at the time you took over this property there were holes in some of the pipes that were stopped up with broom handles, do you say that the consideration of $110,000 paid for the physical property was a fair one?

A. I don't think that I am qualified to answer your question, Mr. Mahon.

Q. Well, what would you say in view of those conditions existing at the time you bought the property, and considering [fol. 175] what you had to do to put it in condition; that Mr. Heyser's view as stated in his report that the property is now in good operating condition is correct?

A. I think so.

Q. You think it has been made so?

A. Yes, sir.

Q. What additions have you made to the property in the Kenton district, if you know, since this 1926 appraisal was made?

A. We have made some, but I am sorry that I haven't that information with me; I forgot one envelope when I left home, and that is over in Kenton, but there have been some improvements.

Q. Well, some in the Kenton district?

A. Yes, sir, in the Kenton district proper.

Q. Well, is that available so that you can furnish it to the Commission?

A. Well, it is incorporated in this report. You said up to August 1st, 1929?

Q. Yes, from 1926.

A. It is all in the appraisal that has been designated as Company's Exhibit No. 1.

Q. Well, I don't want to argue with you, but do you mean those are included in Mr. Heyser's report?

A. Yes, sir.

Q. By years?

A. No, they are not set out, as I understand it, by years or anything of that sort; but if you desire, Mr. Mahon, a detail of the property installed from August 1st, '26 to August 1st, '29, I shall be glad to furnish it to you.

Q. That is what we would like to have if you can furnish that for the Commission, and can you tell us when you get that data just what was spent for those improvements in 1926, 1927, 1928 and up till the date of this appraisement, August 1929?

A. That is the additions to capital?

[fol. 176] Q. In the Kenton district, yes, sir.

Mr. Bentley: Do you want it furnished to you, or as a part of the record?

Mr. Mahon: I want it furnished to the Commission, and if it is not too much trouble I would like to have a carbon copy of it.

Mr. Hebel: Would you have any objection if that included all capital expenditures down to the date of this hearing?

Mr. Mahon: I suppose that you may want to include your new building?

Mr. Hebel: We want to include everything in this property.

Mr. Bentley: We will make it to August 1st, and then the additions since.

Mr. Mahon: Yes.

By Mr. Mahon:

Q. The cost of this rehabilitation program that you have referred to, how is that charged, Mr. Pringle, if you know; was that charged to working capital or to expenses?

A. The greater part of it was capitalized.

Q. Well, do you know what it amounted to?

A. No, I don't, but it is in the record of the former hearing.

Mr. Mahon: All right, I believe that is all.

* * * * * * *

[fol. 177] Mr. Bentley: I would like to offer for whatever probative value it may have a certified copy of the official valuation of this property made by this Commission in December, 1926.

Mr. Mahon: There is no objection to that.

Commissioner Bricker: It may be admitted.

Mr. Bentley: I haven't a copy. I will furnish it.

Commissioner Bricker: Is this contract with the Ohio Fuel Gas in the record?

Mr. Mahon: It is attached to their appeal, your Honor.

Mr. Bentley: As I understand Exhibit 1 was admitted?

Chairman Geiger: Yes.

Thereupon the information to be furnished by the witness and copy of valuation of property made by the Commission in December 1926 were admitted in evidence on behalf of the appellant, and are herewith submitted marked [fol. 178] Company's Exhibits Nos. 2 and 3.

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And also—

E. L. Heyser, called on behalf of the appellant, being duly sworn, testified as follows:

Examined by Mr. Hebel:

Q. State your name.

A. E. L. Heyser.

Q. Where do you live, Mr. Heyser?

A. Philadelphia, Pennsylvania.

Q. What is your business or profession?

A. Appraisal engineer.

Q. How long have you been engaged in that occupation?

A. Since about 1911.

Q. Continuously?

A. Yes, sir.

Q. And with what company are you connected?

A. Day & Zimmermann, Incorporated.

Q. How long have you been connected with that company and what is the business of that concern?

A. I have been connected with that company since February 1, 1929.

Mr. Mahon: Your Honor, if I may interrupt we will admit this gentleman's eminent qualifications as an engineer.

Commissioner Klinger: You may put in the record any qualifications that you have in any other record, whatever they may be.

* * * * * * *

[fol. 179] Q. You keep in touch, Mr. Heyser, at all times, with the changes in unit cost and prices of construction, do you?

A. Yes, sir.

Q. I would like to ask you whether or not there has been any material change in unit prices and cost of construction for this kind of work between August 1st, 1929 and the present time?

A. I would say generally no. There has been a movement up and down, but it practically flattens itself out.

Q. So that in your opinion this appraisal made as of the date certain, August 1, 1929, represents also practically the cost of reproducing this property as of today?

A. Yes, sir.

* * * * * * *

[fol. 180] Cross-examination:

By Mr. Mahon:

Q. Mr. Heyser, did you examine or take into account any leakage factor in this distribution line inside of Kenton?

A. No, sir.

Q. Well, what do you know about the leakage factor, whether there is any leakage on these distribution lines?

A. There is unaccounted for gas.

Q. Well, isn't that just a fancy name for leakage?

A. That includes leakage and difference in volume of gas due to measurement—the purchased gas being meas-

ured by a master meter and the consumer's gas being measured by an individual meter.

[fol. 181] Q. Well, one way or another it has leaked out?

A. Well, there is a difference between what they bought and what they sold.

Q. Did you take that factor into account in your representation of the condition of these lines?

A. I made no study of the unaccounted for gas during that period.

Q. You do, however, make a statement that the lines were in good operating condition?

A. As far as my information is concerned, yes, sir.

Q. Well, that is what you say in your report?

A. Yes, sir.

Q. What would you say would be a normal percentage of leakage for unaccounted for gas?

Chairman Geiger: What has that to do with the question?

Mr. Mahon: Why, Your Honor, he represented the lines were in good operating condition.

Chairman Geiger: Well, have you got a record of leakage?

Mr. Mahon: I have a record of what normal leakage is, and I have some information as to what the leakage factor is in these lines, yes, sir.

Chairman Geiger: Well, that is all right.

Q. Well, assuming that a normal leakage factor is 5 per cent, and that the leakage in these distribution lines is 10 per cent; now, what would you say as to the good condition of the lines?

A. I wouldn't say that there is any normal leakage factor.

Q. I didn't ask you to. I am asking you to assume.

A. I don't care to assume it.

[fol. 182] Mr. Mahon: I think I have a right to an answer to that kind of a question, Your Honor.

Chairman Geiger: Well, put it this way. Assuming that the leakage of these lines is twice as much as a normal leakage of a line in good condition, what would you say was the condition of this line?

The Witness: I would have to study the conditions governing the determination of leakage before I would say whether it was in a deteriorated condition or not.

Mr. Mahon: I think we are entitled and the Commission is entitled to an answer to that.

Chairman Geiger: Well, we are entitled to draw our conclusion.

The Witness: A normal leakage is not 5 per cent; it might be more. It ranges sometimes 5 to 12 or 15.

Chairman Geiger: Well, I understand you have information as to what normal leakage is?

By Mr. Mahon:

Q. You don't subscribe to that theory that it is 5 per cent?

A. No, sir.

Q. Is it more or less?

A. I don't know.

Q. Will you turn please, to your account No. 213——

By Commissioner Bricker:

Q. Now, just a minute. You are coming before this Commission, Mr. Heyser, as an expert on operating efficiency of gas plants, and asking us to take your word as to what the operating efficiency and per cent condition of the property is. Now, you must have some opinion as to what the normal or average loss would be?

A. I am saying that I am not subscribing to the five per cent.

Q. Well, what is your opinion as to a normal or average [fol. 183] loss?

A. It would be 8 to 10 per cent; runs anywhere from 5 to 15, sometimes 20, 25; but it will drop back as maintenance is put into effect.

Q. But that does reflect the operating condition of the distribution system, does it not?

A. It does reflect it, yes.

Q. That is what I thought.

A. That is one of the factors that enters into the determination of the operating condition.

By Mr. Mahon:

Q. Then you would concede, wouldn't you, that I am not so far off on 10 per cent or on 5 per cent being the normal leakage factor?

A. No, sir.

• • • • • • • •

[fol. 184] Mr. Mahon: We are through with the cross examination, Your Honor.

Commissioner Bricker: Has the company any other witnesses?

Mr. Hebel: I want to put Mr. Pringle on for really rebuttal evidence, so if you want to put in your case first——

Commissioner Bricker: You can't finish with your witnesses this afternoon?

Mr. Mahon: We are not prepared to offer any testimony on behalf of the city at this time, Your Honor. We thought this hearing was confined to the examination of the company's experts upon their appraisal.

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[fol. 185] And also—

Frank L. Pringle, recalled on behalf of the appellant, having been duly sworn, testified as follows:

Examined by Mr. Hebel:

* * * * * * *

[fol. 186] Q. Mr. Pringle, will you state to the Commission what the practice of your company is in reference to installing meters in the city of Kenton, as to whether there is any charge to the customers for that service?

A. A customer may make application to our company for service and a meter is installed on the premises absolutely free of charge to the customer; no charge whatever is made for installation.

By Commissioner Bricker:

Q. Or for the meter?

A. No, sir.

By Chairman Geiger:

Q. Well, is he required to put down $5.00 in cash before he makes connection?

A. Not in every case. Our company proceeds according to statute on that subject. If a man is a freeholder and financially responsible, we do not require a deposit of him. In the event that he is not, we require a deposit, and after

that deposit has been with us six consecutive months or longer, according to the statute, we pay the customer 6 per cent interest.

By Commissioner Bricker:

Q. What is the average amount of the deposits in your company at any time?

A. I will have to make an estimate. I judge that since the conception of the idea of deposit, we have an amount of approximately something more than $20,000.

Q. On substantially all of which you pay the 6 per cent interest?

A. Yes, sir.

By Chairman Geiger:

Q. But you use it in your business?

A. A separate account is kept of all deposits; complete card detail file, and the amount is balanced monthly, in order that we can account for the funds received at any and all times.

[fol. 187] Q. But you may use it for working capital?

A. Yes, sir.

By Mr. Hebel:

Q. There has been some discussion, Mr. Pringle, about your unaccounted for gas. Tell us what you can about that subject; what are the factors that lead to unaccounted for gas?

A. There never was a gas company in existence and operating that doesn't have to deal with the subject of unaccounted for gas; and when we speak of unaccounted for gas, we do not necessarily mean gas that is escaping from distributive pipe lines or pipe. The greatest per cent of unaccounted for gas in gas companies can be attributed to the difference in time of reading the meter through which the wholesale gas is purchased and the date of reading the individual customer's meters. There is an elapsed period in there which accounts for the greatest part of the unaccounted for gas. There is also a known factor, but its exact determination is impossible, that we refer to as steals; you may not know it, but a great number of people steal any product; always have

and always will. They always devise some plan to beat the meter. We frequently find these causes. Just for your information, during the month of March we found three individuals of the city of Lima that had been stealing gas for at least 20 years, the quantity taken from the line not going through the meter is unknown.

By Mr. Bricker:

Q. How is that done, by an additional pipe, or would an ordinary inspection by the company reveal it?

A. I mentioned this case as an example. On North Liberty Street in Lima, we found a case of a customer stealing [fol. 188] gas, and here is how we found it. We went there to remove the meter for a periodical test, and when the men shut the gas off at the stop cock in the service line coming to the meter and set the meter down, the gas blew back on the outlet side at the house line, and he knew, of course, there was something wrong because he had the gas shut off at the cock. He immediately investigated. This particular house had about one-fourth of a basement, in other words just about one quarter underneath the house there is a basement. The house sets very low on the ground. We found the smallest man in our company and had him crawl underneath the house, and where the service line comes in from the curb up underneath the house, a tee was inserted in the line and a connection made into this tee and ran over under the house, up through the floor into the dining room back of the door, and in the floor they had it cut out, a little box affair cut out and a stop cock there and a small bicycle wrench lying handy, the idea being that usually the housewife knows when the meter reader calls to read the meter, and they would open this stop cock in the basement or on the line to the meter and close their opening, permit a certain quantity of gas to register that might allay suspicion; and immediately after the meter reader had departed they would close the stop cock on the service line and open the other which would permit gas to be by-passed around the meter. We found in this instance a hot water heater and a radiant fireplace on this by-pass line. Of course, we shut the service off and had the people come in, and they didn't know how it got there or when it was put there; yet it was there.

By Mr. Hebel:

Q. Now, in addition to these factors you have named, of [fol. 189] course there also is the factor of leaks in the line?

A. Yes, sir, there is some leaks in the line.

Q. Will you state briefly, Mr. Pringle, the policy of your company, what it does in the way of maintaining its transmission and distribution lines?

A. The records of our company will show that we spend sums of money for the upkeep and maintenance of all our physical property, mains, services, meters, and in fact all items of property that need maintaining in order that they might be kept to that point of efficiency whereby we can render service to our customers, such service as our customers demand.

Q. Yes; and if you find a break in your gas mains or gas service or in a defective joint, as a part of your maintenance program, what do you do?

A. Immediately to make repairs and if necessary remove a piece of pipe or a joint of pipe or whatever piece of property is necessary to be removed or repaired. I have known our men to work all night, because gas costs us 55 cents a thousand at the city gate, and it is just the same as throwing money away if you permit your lines to leak and lose your product. So it is our policy and our practice to maintain, as far as physically possible, all of our property.

Q. You make those repairs with new or second-hand material?

A. Always with new material.

* * * * * * *

[fol. 190] Cross-examination.

By Mr. Pfeiffer:

Q. I have a couple of questions I want to get clear in your contract with the Ohio Fuel Gas Company. I believe that there is an arrangement made whereby the Ohio Fuel Gas Company retains the right to use those pipes for the transmission of certain gas to Ada, Ohio; is that not true?

A. That is true.

Q. Now, does the Ohio Fuel Gas Company pay you any rental for this?

A. None whatsoever.

Q. Well now, who distributes the gas in Ada, Ohio?

A. The Ohio Fuel Gas Company.

Q. And can you say as to whether or not the Ohio Fuel Gas Company rates in Ada are greater or less than the rates charged by the West Ohio Gas Company to the Kenton consumers?

A. I don't know just what the rate is in Ada.

Q. Well, as a matter of fact it is cheaper, is it not?

A. If you will name the rate I can tell you quicker.

Q. Well, I can't say it exactly myself. There is a first step of 90 cents for the first 400 or a dollar, then 63 cents a thousand thereafter, I believe; I can find that out. But at any rate it is cheaper than the Kenton rate, is it not?

A. It runs in my mind that that is true.

Q. And the gas distributor there, or the distributing company, I should say, the utility, is the Ohio Fuel Gas Company?

A. Yes, it distributes as well as produces the gas that is used in Ada.

Q. And it brings the gas through those same transmis- [fol. 191] sion mains that furnishes the gas to Kenton, Lima, Celina, Wapakoneta and St. Marys, does it not?

A. May I say this, Mr. Pfeiffer; the Ohio Fuel Gas Company, as I understand it, owns the line within the vicinity of our lines, and whether Ada is supplied through their line from some other field or through our line I am unable to tell you for a certainty at this time. But I do know they have a line——

Q. Well, in their contract with you, they retain the right to use certain gas through your transmission mains; that is correct, isn't it?

A. I think so.

Mr. Pfeiffer: I believe that will be all.

And thereupon the appellant rested.

And thereupon the further hearing of this matter was continued to a date later to be set by the Commission.

[fol. 192] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5666

[Title omitted]

Proceedings

Before Honorables E. J. Hopple, Chairman; Frank W. Geiger, and John W. Bricker, Public Utilities Commissioners

Thursday, January 21st, 1932.

Appearances:

Messrs. E. W. Hebel, Charles C. Marshall and H. O. Bentley, on behalf of West Ohio Gas Company.

Messrs. Fred Markley (City Solicitor of the City of Kenton, Ohio), Paul T. Mahon, and L. B. Brown, on behalf of the City of Kenton, Ohio.

[fol. 193] Afternoon Session

Thursday, January 21, 1932.

Commissioner Bricker: The matter for hearing at this time is case number 5666, in the matter of the protest of the West Ohio Gas Company and the city against the tentative value of the West Ohio Gas Property used and useful in rendering service in the city of Kenton, Ohio,

Let us have the appearances please.

Mr. Bentley: E. W. Hebel, Charles C. Marshall and H. O. Bentley on behalf of West Ohio Gas Company.

Mr. Brown: Fred Markley, City Solicitor of the City of Kenton, Ohio, Paul T. Mahon and L. B. Brown, for the city of Kenton.

Commissioner Bricker: You may proceed.

Mr. Hebel: I assume that by direction of the Commission the record dated August 29th, 1931, being the report of Mr. O. F. Foster, engineer, as to the results of his appraisal and valuation of property used and useful by the West Ohio Gas Company in serving gas to the City of Kenton, Ohio, may be copied into the Record as Commission's Exhibit 1, and the letter of September 14th, 1931,

addressed to Mr. Sprankle, superintendent of investigations, and signed by Wm. Rogers Dwyer, chief engineer, in reference to this valuation, may be copied into the record as Commission Exhibit No. 2.

Commissioner Bricker: Yes, that may be done.

* * * * * * *

[fol. 194] Commissioner Bricker: This matter having come on to be heard upon the protest of the Company against the tentative valuation fixed by the Commission for the property of the West Ohio Gas Company used and useful in rendering service in the city of Kenton, Ohio, and the Commission having fixed that tentative valuation, the hearing having been held, the testimony adduced, the company having presented its protest against the tentative valuation, the Commission is of the opinion that the tentative valuation fixed by the Commission in connection with the Kenton case, being case number 5666, on the dockets of the Public Utilities Commission, should be and the same is hereby made the final valuation of the property used and useful in rendering service in the city of Kenton, Ohio, with those changes which have been agreed to by our engineers and the parties, those being the corrections made in the transmission lines.

If there are any exceptions to be saved, you may have them on both sides.

That is all.

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[fol. 195] Wednesday Morning Session

June 8, 1932.

And thereupon the further hearing of this cause was resumed, pursuant to adjournment, before Honorable John W. Bricker, Public Utilities Commissioner.

Appearances:

Same parties present by their respective counsel as at previous session.

Commissioner Bricker: Case Number 5666, appeal of the West Ohio Gas Company, Kenton, Ohio. The appearances are the same as before. You may proceed.

And also—

FRANK L. PRINGLE, called on behalf of the West Ohio Gas Company, being heretofore duly sworn, testified as follows:

Examined by Mr. Hebel:

Q. You are the same Frank L. Pringle who testified at several previous hearings in this case?

A. Yes, sir.

Q. And what is your present position with the West Ohio Gas company?

A. Comptroller.

[fol. 196] Q. In that position you have charge of the records and accounts and accounting system of the company?

A. Yes, sir.

Q. Those records are kept directly under your supervision?

A. Yes, sir.

Q. Mr. Pringle, the ordinance involved in this appeal was passed by the City of Kenton to take effect as of what time?

A. The ordinance was passed in July, 1927.

Q. And by its terms, was to take effect as of the first of August, 1929?

A. Or at the earliest period allowed by law. Whether that is it or not, I don't remember.

Q. Have you prepared from the records of the West Ohio Gas Company a statement showing the net applicable to return from gas operations in Kenton District?

A. I have.

Q. For what periods?

A. For the year ending August 1st, 1929, for the calendar year 1929, and calendar years 1930 and '31.

Q. The first period mentioned was the twelve months' period immediately preceding the effective date of the present ordinance?

A. Yes, sir.

Q. And that was prepared from the books and records of the company?

A. Yes, sir.

Q. And any adjustments from the record figures are shown in the exhibit?

A. Yes, sir.

Q What territory is embraced within the Kenton district?

A. City of Kenton, Ohio.

Q. Alone?

A. Yes, sir.

Q. So that Kenton district heading on these exhibits only covers service rendered within the single municipality?

[fol. 197] A. Yes, sir.

And thereupon a paper writing was marked for the purposes of identification as Company's Exhibit Number 102.

Q. Now, I hand you a document marked Company's Exhibit 102 and ask you to examine that and state whether that is the exhibit concerning which you have just testified that was prepared by you?

A. It is.

Q. Turning to the table of contents, Page, Mr. Pringle, will you state what schedule Number 1 in the exhibit covers?

A. Schedule Number 1 is the statement of the revenue and expenses for the years ending August 1st, 1929, and the calendar years 1929, '30 and '31.

Q. After allowance for depreciation reserve and amortization of pipe line?

A. Yes, sir.

Q. The schedule 2 to 16 included in the exhibit, is that supporting data for the initial or summary schedule Number 1?

A. Yes, sir.

Q. What was the number of the rate order issued by this Commission which fixed and determined the rates for Kenton prior to the present case?

A. Order issued January 31, 1927, in Advance Utility Rate Proceeding Number 245.

Q. And in that order was an annual rate of return fixed as a fair and reasonable rate of return?

A. Yes, sir.

Q. From Kenton operations?

A. Yes, sir.

Q. What was that rate of return?

A. Eight per cent.

Q. What was the sum mentioned in that order as the number of dollars in net return which should be earned on the valuation fixed in that order in order to make the [fol. 198] eight per cent?

A. $14,568.00 annually.

Q. Will you turn to Schedule Number 2 and state what is shown on that schedule?

A. Schedule Number 2 is the detail of the revenue and expenses for the year ending August 1st, 1929. The first column of figures on this schedule Number 2 as are shown by the records of the company. The adjustments shown in the next column are made in order to give effect and consideration to cost of rate litigation and amortization and depreciation as set out in the Commission's order in case Number 245, the amount shown in the adjustment column added to the figures in the first column giving us the results as shown in the total or last column of figures on this Schedule Number 2.

Q. And the total in the last column on Schedule Number 2 is the total net return and the total gross operating income as shown on your Schedule Number 1 under the year ending August 1, 1929?

A. Well, it shows the total, not the net return, but it shows the total operating expenses and the total gross revenue as carried forward to Schedule Number 1 under the column "Year ending August 1st, 1929."

Q. And you have here displayed notes which explain the adjustments?

A. Notes and comments explain the amounts appearing under the adjustment column.

Q. Now, your Schedule Number 3 is a similar schedule to Number 2 except that it covers the calendar year of 1929?

A. Yes, sir.

Q. And Schedule Number 4 is similar to Schedule Number 2 except it covers the calendar year, 1930?

A. Yes, sir.

[fol. 199] Q. And Schedule Number 5 is similar to Schedule Number 2 except that it covers the calendar year 1931?

A. Yes, sir.

Q. And explanatory notes of the adjustments are made on each of those schedules?

A. Yes, sir.

Q. Now, what is Schedule Number 6?

A. Schedule Number 6 is a statement of the cost of gas and distribution expenses for the years ending August 1st, 1929, and the calendar years 1929, '30 and '31.

Q. And is a breakdown of what item appearing on Schedule Number 1, the principal schedule?

A. The cost of gas as shown on Schedule Number 6 in the amount of $38,674.35 appears as the first item on Schedule Number 1 under the year ending August 1st, 1929. Total distribution expenses as shown on Schedule Number 6 are also carried forward to Schedule Number 1 appearing in each of the respective years as distribution expenses.

Q. That is the second item under operating expenses?

A. Yes, sir.

Q. Now, Schedule Number 7?

A. Schedule Number 7 is a detailed statement of commercial expenses for the year ending August 1st, 1929, and the calendar years 1929, '30 and '31, and the totals as shown on this schedule Number 7 are also carried forward to Schedule Number 1 and shown as commercial expenses under each of the years.

Q. Are the accounts of your company kept in accordance with the uniform classification of accounts for gas utilities?

A. They are.

Q. And are the headings of the different accounts as shown in this exhibit the titles or headings of those ac-
[fol. 200] counts as named in the classification?

A. Yes, sir.

Q. And your expenses are distributed to the various accounts in accordance with the instructions of the classification?

A. They are.

Q. And that is true as to each and every schedule which appears in this exhibit?

A. Yes, sir.

Q. And as to each and every account which your company keeps?

A. Yes, sir.

Q. Now, Schedule Number 8?

A. Schedule Number 8 is a detailed statement of new business expenses for the year ending August 1st, 1929, and calendar years 1929, '30 and '31.

Q. And the total?

A. The total new business expense as shown on Schedule Number 8 is carried forward to Schedule Number 1 and shown as new business in each of the years.

Q. All right, your next schedule?

A. Schedule Number 9 is general and miscellaneous expenses for the year ending August 1st, 1929, and the calendar years 1929, '30 and '31.

Q. That includes all general and miscellaneous expense?

A. Yes, sir.

Q. Or is that just the direct general and miscellaneous expenses? Are there any figures on schedule 1 which connect with the total general and miscellaneous expenses shown on Schedule 9?

A. Yes, sir.

Q. Will you show me where those are?

A. These general and miscellaneous expenses, that is shown on Page Number 1 or Schedule Number 1.

Commissioner Bricker: Just two items there I would like to ask about, that is the regulatory commission expense [fol. 201] of 3200 in '29 and 4800 in——

The Witness: That is the amount of rate case expense written off in those two periods, written off on the books of the company and are given consideration on Schedule 10 of this exhibit, which is a statement of the rate case expense.

Mr. Hebel: We are coming to that next.

Commissioner Bricker: All right.

Q. Well, let me put the question this way, Mr. Pringle, will you examine your supplementary schedules and then state on what supplementary schedules are shown the total item of general and miscellaneous expense appearing for each of the years mentioned on Schedule 1?

A. Schedules 9 and 13.

Q. Those two schedules cover the general and miscellaneous expense?

A. Yes, sir.

Q. But the total expense as shown in those schedules varies somewhat from the amount for general and miscellaneous expense shown in Schedule 1?

A. Yes, sir.

Q. At least for the year ending August 1, 1929?

A. Yes, sir.

Q. Now, will you explain that variation?

A. The difference is the amounts appearing in the adjustment column on Schedule 2, general and miscellaneous.

Q. And explained under Note 1 on Schedule 2?

A. Yes, sir.

Q. All right, now what is the fact for the calendar year of 1929 as to what supplementary schedule must be taken into account in arriving at the general and miscellaneous expense item shown in Schedule 1?

A. Schedule 9 and Schedule 3.

[fol. 202] Q. Schedule 3 being taken into account to get adjustment explained in note Number 1?

A. Yes, sir.

Q. Which reduces the general and miscellaneous expense for that year by reason of a credit?

A. Yes, sir.

Q. Explained on Schedule 3?

A. Yes, sir.

Q. Now, what about the calendar year 1930?

A. I take into consideration schedule 9 and schedule 4.

Q. What item on Schedule 4 must be taken into consideration?

A. Amount shown under adjustment column as explained under notes and comments.

Q. Note 1?

A. Note 1.

Q. And the sum of that item plus the total for that year on Schedule 9 makes up the amount appearing on Schedule 1?

A. Yes, sir.

Q. Now, is the same explanation required for the calendar year 1931?

A. Yes, sir.

Q. Except that you refer to schedule 9 and schedule 5?

A. Yes, sir.

Q. And the item on Schedule 5 to be taken into account is the adjustment item shown under note 1?

A. Yes, sir.

Q. Now, turning to schedule 10, Mr. Pringle, what does that schedule detail?

A. Schedule Number 10 is a statement of the total cost of Kenton rate cases from July 1st, 1926, to December 31, 1931.

Q. That involves two rate cases, does it?

A. Yes, sir.

Q. Will you explain the manner in which you have allocated for the purpose of this exhibit the rate case expense involved in connection with each of these two rate cases?

[fol. 203] A. Rate case Number 1 is shown on Schedule Number 10.

Q. Pardon me, is that the case involving Order 245 of this Commission?

A. Yes, sir.

Q. The rate case immediately preceding the present one?

A. Yes, sir.

Mr. Mahon: Now, we object to that, Your Honor. We don't see upon what basis they can claim any relevancy for that in this case, the cost of that old rate case back in 1925 and '6.

Mr. Hebel: Mr. Mahon, I can explain that, the data furnished the Commission here includes one year's operations prior to the effective date of your present ordinance. Now, in order to show the net return for that year, it is necessary to see what proportion of the old rate case expenses were properly attributed to that year's operations.

Commissioner Bricker: That rate case is carried into your expenses for the year?

Mr. Hebel: Ending August 1, 1929, and part of it for the calendar year ending 1929.

Commissioner Bricker: Your objection would be not to the exhibit, but the objection would be to the inclusion of the amount of rate case expense in the set-up.

Mr. Mahon: That is right, in the old case here, for instance, they bring up the expenses, rate case Number 1, covering the period from July 1st to December 31st, 1926.

Commissioner Bricker: You can bring that out. It doesn't go to the competency of the exhibit.

Mr. Mahon: Oh, no, not to the exhibit as a whole, but this particular item, we don't see that it is competent.

[fol. 204] Mr. Hebel: And none of that charge gets into the period covered by the new ordinance.

Q. The ordinance in that case was passed what date?

A. In case 1?

Q. Yes, or was to become effective as of what date?

A. August 1st, 1926.

Q. And the present ordinance was passed to become effective August 1st, 1929?

A. Yes, sir.

Q. Now, will you explain how the proportion of rate case expense for Case Number 1 which appears under operating expenses in this exhibit for the year ending August 1, 1929, and the proportion which appears in operating expenses for the calendar year of 1929 were determined?

A. Rate case Number 1 was written off over a 36 months' period beginning August 1st, 1926, and ending July 31, 1929, or 1/36 of the total cost of $14,772.47 was allocated to each month during that three year period.

Q. Now, just a moment on Case Number 1. So that in your exhibit statement for the year ending August 1st, 1929, there appears one-third of the rate case Number 1 expense?

A. Yes, sir.

Q. And in your statement as to the net earnings for the calendar year of 1929, there appears 7/36 of the expense of rate case Number 1?

A. Yes, sir.

Q. Which is determined by taking the total rate case Number 1 expense and dividing it by the number of months that that ordinance was effective?

A. Yes, sir.

Q. Now, how have you determined the question of rate case expense Number 2, which is the present case?

[fol. 205] A. We decided that the cost of rate case Number 2 should be written over a 36 months period beginning August 1st, 1929, and ending on July 31st, 1932, or 1/36 of the total of $8,786.14 allocated to each month, and the cost of case Number 2 is the total cost up to May 1st, 1932.

Q. So that the total expense of the pending rate case will be something in addition to the item which you show?

A. Yes, sir.

Q. Your item containing no estimates but only the actual expenses incurred to the present time?

A. Yes, sir.

Q. And yet you divided that over the full 36 months' period?

A. Yes, sir.

Q. So the amounts shown for each month of that period for rate case expense is something lower than the actual expense will finally be?

A. Yes, sir.

Q. Now, in your summary for the calendar year 1929, there is 7/36 of rate case expense Number 1 and 5/36 of rate case expense Number 2, is that correct?

A. No, that isn't.

Q. Will you state in what respect that is incorrect?

Mr. Mahon: That is Page 2 of your exhibit?

Mr. Hebel: Page 3.

A. Calendar year 1929, it will be shown under notes and comments, Note Number 1, that a deduction of $707.10 was made to general and miscellaneous expenses to cover amortization of rate case expense as shown on Schedule Number 10. In other words, this calendar year 1929 got a credit of $707.10 on account of the amount that had already been written off of this case.

Q. In that year?

A. Yes, sir.

[fol. 206] Q. Well, in other words, Mr. Pringle, that case was made so as to adjust to the calendar year 1929, its proportionate share of rate case expenses?

A. Yes, sir.

Q. And after you had made that adjustment, is it or is it not a fact that for the calendar year 1929, you had a charge for rate case expense made up of the sum of these two items?

A. Yes, sir.

Q. 7/36 of rate case expense in case Number 1 and 5/36 of rate case expense in case Number 2?

A. Yes, sir.

Q. And for the calendar years 1930 and '31, there appears in each of those years 12/36 of the rate case expense of case Number 2?

A. Yes, sir.

Q. And nothing for case Number 1?

A. Yes, sir.

Q. And if there are any adjustments in the adjustment column, it is in order to make the total equal the 12/36?

A. Yes, sir.

Q. All right, will you take the next schedule?

A. Schedule Number 11 is commercial expense giving effect to charges account of joint district expenses apportioned for the year ending December 31, 1931. In other words, we have some commercial expense charged direct to the Kenton district and, according to the note on the schedule, it will be shown that certain of the other commer-

cial expenses are incurred in the Lima district and are apportioned to each of the districts on the basis of the number of customers and of the total expense for the year 1931 of $740.51 incurred in the Lima office, 67.64 per cent. of the total was for the cost of labor and 32.36 per cent. for the cost of supplies. Of that amount $216.38 was apportioned to the [fol. 207] Kenton district covering its proportionate share of general office labor and supplies for that year.

Q. Schedule 12?

A. Schedule 12 is a statement of the new business expenses, giving effect to charges account of joint district expenses apportioned in the year ending December 31, 1931.

Q. And that includes some direct expense and some apportioned expense?

A. Yes, as explained in the note on this schedule.

Q. And does the note explain the basis of its apportionment?

A. Yes, sir.

Q. The apportionments explained in these notes are the basis of apportionment for each of these accounts on which you kept your books?

A. Yes, sir.

Q. And what is the next schedule?

A. Schedule 13 is general and miscellaneous expense giving effect to charges account *account* of joint district expenses apportioned for the year ended August 1st, 1929.

Q. Does the note explain on what basis that apportionment is made?

A. The note shows the explanation on the apportionment basis.

Q. And the apportionment made in the exhibit is the same as that in which you kept your books from year to year?

A. Yes, sir.

Q. Now, Schedule- 14, 15 and 16 are similar schedules except for different periods?

A. And cover general and miscellaneous expenses.

Q. Yes. Those last three named schedules, 14, 15 and 16, are similar schedules to 13?

A. Yes.

[fol. 208] Q. Which you have explained, except that they cover different accounting periods as noted on these schedules?

A. Yes, sir.

Mr. Hebel: That is all. Do you wish to cross-examine now?

Commissioner Bricker: You will have two or three other exhibits, won't you?

Mr. Hebel: Yes, sir.

Commissioner Bricker: I think we had better adjourn then until 1:30.

And thereupon a recess was taken until 1:30 o'clock P. M. of the same day, Wednesday, June 8, 1932.

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[fol. 209] Wednesday Afternon Session

June 8th, 1932.

Mr. Hebel: Did you want to cross-examine on that exhibit at this time?

Mr. Brown: Go ahead and put them all in.

And also—

Frank L. Pringle, resuming the stand, testified as follows:

Examined by Mr. Hebel:

Q. Mr. Pringle, have you had a study made to test the revenues that would be derived from August service in the city of Kenton before the rates fixed in the ordinance passed in August or July of 1929 went into effect?

A. Yes, sir.

Q. That was determined by making a study and analysis of customers' bills, was it?

A. Yes, sir.

Q. Actual bills rendered in Kenton?

A. Yes, sir.

Q. How many bills were examined in connection with that study?

A. Approximately 1800.

Q. That was all the bills rendered for the calendar month?

A. Yes, sir.

Q. What calendar month was that?

A. March, 1930.

Q. Will you state how one month was selected and how [fol. 210] the study was made?

A. We took the years 1929, 1930 and 1931 and found an average year, divided the three year period by 36 months to get an average month during the period and the computations gave us an average of $6,643.00 as an average month's revenue, and we took the months in the three years where the revenue was the nearest to the average of $6,643.

Q. That was March?

A. And that month was March, 1930. Then we analyzed each and every customer's bill rendered for that month and analyzed the gas consumed by those customers, and applied the ordinance rates to that analysis.

Q. Do you have before you, Mr. Pringle, the terms of the ordinance rate, that is as to the steps?

A. Yes, sir.

Q. What are they; what is the first step?

A. For the first 400 cubic feet gas or less—strike that out—for the first 400 cubic feet of gas or any less amount, 90 cents.

Q. The next step?

A. For the next 2600 cubic feet at a rate of 75 cents per 1000 cubic feet.

Q. And the next?

A. For the next 7000 cubic feet at a rate of 65 cents per thousand cubic feet.

Q. And the next step?

A. For all over and in excess of 10,000 cubic feet at a rate of 60 cents per one thousand cubic feet.

Q. And then in your study you break up the quantities of gas served so that you could determine what the revenue would be, applying those prices to those steps?

A. Yes, sir.

Q. What was the result of that computation?

A. If the ordinance rate had been in effect during the month of March, 1930, we would have received a gross revenue of $3,603.77.

Q. And how much gas would have been furnished in the [fol. 211] first step or between zero and 400 cubic feet?

A. 724,000.

Q. For which you would have received 90 cents for 400 or less?

A. Yes, sir.

Q. How many cubic feet of gas would you have furnished in the next step?

A. 2,537,200.

Q. For which you would have received 75 cents per thousand cubic feet?

A. Yes, sir.

Q. How much gas would have been furnished in the third step?

A. 1,139,800 cubic feet.

Q. For which you would have received 65 cents per 1000 cubic feet?

A. Yes, sir.

Q. And how many dollars?

A. $740.87.

Q. The next step, all over 10,000, how many cubic feet?

A. 514,000.

Q. At 60 cents a thousand cubic feet?

A. Yes, sir.

Q. For which you would have received how many dollars?

A. $308.40.

Q. How many dollars would you have received for the gas furnished under the first step?

A. $651.60.

Q. And how many dollars for gas furnished under the second step?

A. $1902.90.

Q. Making what total?

A. Making a total of $3,603.77.

Q. What was in fact the total revenues derived from the gas service during that month, under existing rates?

A. $6,643.33.

Q. Now, on that basis what would be the difference in revenue for the month between the ordinance rate and the amount received under the existing rate?

A. $3,040.00.

Q. And on that basis what would be the difference in [fol. 212] revenue for the 12 months' period?

A. $36,480.

Q. What is the nature of your gas business in Kenton, is it largely residential?

A. Chiefly, yes.

Q. Any industrial business?

A. Some.

Q. Is there any commercial business?
A. Yes.

Mr. Hebel: Mark this Company's Exhibit 103.

And thereupon the paper writing last above referred to was, for the purpose of identification, marked Company's Exhibit 103.

Mr. Hebel: I now wish to offer in evidence, in accordance with the understanding between Mr. Mahon and myself this morning, Company's Exhibit 103, which is an exhibit showing the cost of money derived, raised for capital purposes by West Ohio Gas Company. This exhibit is identical with an exhibit introduced in the Lima hearing and the understanding, as I have it, is that that portion of the Lima transcript or evidence that covers the direct examination in the introduction of this exhibit, will be made a part of the Kenton record.

Mr. Mahon: That is satisfactory.

Commissioner Bricker: All right, it may be so ordered.

Mr. Hebel: I believe this morning, at the time we adjourned, I had not offered in evidence Company's Exhibit 102.

Commissioner Bricker: It may be admitted.

And thereupon the paper writing last above referred to was offered, introduced and admitted in evidence on behalf of the applicant, and is herewith submitted marked [fol. 213] Company's Exhibit 102.

Direct examination as to Company Exhibit 103.

(Copied from transcript in Lima Rate case, Cause No. 5137, pp. 1099-1104, as agreed to by parties and directed by Commission, see page 173.)

Q. Mr. Pringle, have you prepared a written statement showing the cost of money of West Ohio Gas Company for money procured through the sale of its bonds and preferred stocks?

A. Yes, sir.

Q. I hand you a document marked Company's Exhibit 106 and ask you to examine that and state whether that is such statement?

A. It is.

Q. Will you explain what is set out in this statement, and the method by which the percentages reached were derived?

A. On page 1 of the exhibit is a statement showing the cost of money secured through the sale of securities, bonds, first and refunding mortgage, 6 per cent gold bonds, consisting of the original issue dated September 1st, 1924, and the supplemental issue dated June 1st, 1931, maturing December the first, 1954.

Q. Now, are those the only two instances in which the West Ohio Gas Company has issued any bonds?

A. They are.

Q. The original issue which you mentioned is December 1, 1924, is that the issue that was put out at the time the West Ohio Gas Company was organized?

A. It was.

[fol. 214] Q. And was that authorized by this Commission?

A. It was.

Q. And consisted of an issue of one million dollars?

A. It did.

Q. Then there were no further bonds put out by the company until June of last year?

A. Yes, sir.

Q. And at that time, an issue in what amount was put out?

A. 300,000.

Q. All right, you may proceed?

A. Total amount of bonds issued and outstanding is $1,300,000.00. From that amount of bonds issued, the company realized on the original issue, $890,000.00, and the supplemental issue 288,000, or a total of $1,178,000.00 On the total issue of bonds issued, a discount of $122,000.00 was allowed.

Q. Now was the net price at which those bonds might be issued in each case fixed and determined by this Commission?

A. They were.

Q. That is the minimum realization?

A. Yes, sir. Expenses in connection with the sale of the bonds in the original issue amounted to $6,552.02, the supplemental issue $1,692.19, or a total of $8,244.21. The annual cost to the company for the money thus realized is in the form of interest charges of $78,000.00 per year, discounts and expenses to be amortized annually, $4,467.60, and federal tax based on our average experience $650.04;

state taxes $172.38; making a total annual cost of $83,290.02, which gives a cost, annual cost, a per cent. of 7.07 plus.

Q. That is the annual cost on each dollar realized for gas [fol. 215] purposes from the sale of bonds, is that correct?

A. Yes.

Q. What does your next line show?

A. The next amount *if* 6.97 per cent. plus, which will be the yield to the purchaser.

Q. That is the yield to the purchaser from you?

A. Yes, sir.

Q. Who purchased these bonds from you?

A. Halsey Stuart Company.

Q. That is a security house, is it?

A. It is.

Q. Specializing in the sale of public utility bonds?

A. Yes, sir.

Q. Do you know whether that house handles stock issues?

A. I am not certain.

Q. Where is the principal office of that?

A. Chicago.

Q. Do you know what other places they have offices?

A. They have offices located in all other principal cities of the country.

Q. In other words they market these bonds nation-wide?

A. They do.

Q. Do you know in how many states at the present time, holders of these bonds are located?

A. The bond holders are located in 28 states.

Q. Do you know whether bonds are held by any holders outside of the United States?

Commissioner Bricker: What is the purpose of this?

Mr. Hebel: Show the distribution of these bonds.

[fol. 216] Commissioner Bricker: What has that got to do with the rates?

Mr. Hebel: The sale of these bonds is nation-wide and not merely local.

Commissioner Bricker: What if they are?

Mr. Hebel: I think it effects the question of the rate of return to which this company is entitled.

Commissioner Bricker: In what way?

Mr. Hebel: The fact is that the sale of utilities securities is generally nation-wide and consequently the results of the holdings of the courts as to what money cost in various

sections of the country to utilities doesn't become of direct——

Commissioner Bricker: You are showing the actual cost here. I don't think it is necessary to go into this.

Mr. Hebel: Well, but the question of the rate of return is dependent on the general cost of money for utility companies throughout the country.

Commissioner Bricker: You can't show that by showing how diversified the sale of your bonds is, whether they are held in foreign countries or not. Go ahead. It is immaterial so far as I can see, you may proceed in your own way.

Q. What is the average price or amount realized by your company from the sale of bonds?

A. The average price per hundred dollars is $90.61.

Commissioner Bricker: What I can't quite follow, is this money that you borrowed to operate your company, or are [fol. 217] you still upon the proof of replacement value of your property?

Mr. Hebel: This is the money, Your Honor, that is actually realized from the sale of securities by this company for capital purposes, securities sold with the permit of this Commission.

Commissioner Geiger: Haven't we found the value of the property?

Mr. Hebel: Yes.

Commissioner Geiger: Then what has this got to do with it?

Mr. Hebel: This is evidence to establish the cost of money to the company, which is certainly directly important in determining the rate of return which the company should be allowed.

Commissioner Geiger: Well, never mind. It would be all right to put in, or at least, many have thought it all right, some have doubted whether it is all right, cost of money acquired to build the plant or to replace the plant theoretically to replace it; but what your bonds paid or anything else hasn't anything to do with it. The cost of your money may be shown to go to fixing the value of your property used and useful.

Mr. Hebel: No, Your Honor, I am simply trying to show by what evidence is available, the rate of return to which this company is entitled. Now, certainly the evidence as to what money actually cost this company is as good evidence as possibly could be produced.

[fol. 218] Commissioner Bricker: The evidence that we really desire at this time is how much return you have to have to keep capital flowing into industry. You might have made an uneconomic distribution of these bonds, you might have made too much discount, you might have given too much to the bankers. In other words you have to go into all these questions if you expect to bind us by your experience.

Commissioner Geiger: How about just putting it in for what it is worth, tell what it is and put it in the records without reading it over?

Q. The second page covers the cost of stock?
A. Yes, sir.
Q. Preferred stock sold by the company?
A. Yes, sir.

[fol. 219] Cross-examination.

By Mr. Brown:

Q. Well, Exhibit 103 relates to your property as an entirety, does it not?
A. I have not a copy of that exhibit, may I see it? Now, may I have your question again, Mr. Brown?

Mr. Brown: Read it.

(Question read.)

A. This Exhibit 103 relates to all the securities issued by the company for which its entire property is pledged.
Q. And included in that property pledged is the Kenton issue?
A. Yes, sir.
Q. There is no separate allocation of the securities issued to the Kenton district?
A. No, sir.
Q. So that the exhibit as set up, just shows the entire amount of securities that have been issued by the West Ohio Gas Company?
A. Yes, sir.

Q. Without any relation as to any portion that might be allocated to Kenton?

A. Yes, sir.

Q. Calling your attention to Exhibit 102; this exhibit reflects the figures from your books with certain adjustments taken from your books, does it not?

A. Yes, sir.

Q. These adjustments are they actual figures taken from your books or are they arbitrary figures arrived at in some other manner, the various adjustments set up in here?

A. The adjustments that are shown here are actual figures.

Q. And the figures in the entire exhibit are figures that [fol. 220] were taken directly from the records of your company?

A. Yes, sir.

Q. So that all of them are actual receipts and expenditures; there is no estimated receipts and expenditures?

A. Well now, not exactly that, Mr. Brown; for instance, the amortization and depreciation here as shown on the several sheets in this exhibit are the figures that were determined by the Public Utilities Commission of Ohio in case No. 245 and are used in this exhibit in order to conform with the findings of the Commission in that case.

Q. Are they set up on your books?

A. No, sir.

Q. Is income tax set up in your books?

A. Yes, sir.

Q. But the figures as to amortization then you base them upon the old 1926 case; that is 245?

A. Yes, sir.

Q. But they are not set up on your books at all?

A. No, sir.

Q. Just set up in this exhibit?

A. Yes, sir.

Q. The amortization represents the transmission line leading from Kenton, east of Kenton, does it not?

A. Yes, sir.

Q. And who allocated that portion of the line to Kenton as was determined in the preceding rate case, that is the way you obtained the basis of your allocation, is it?

A. For the amortization?

Q. Yes.

A. Amortization was determined by the engineers of the Public Utilities Commission. We did not determine that.

Q. That is the amount allowed?

A. Yes, sir.

Q. Have you been setting aside each year a sum of money that represents the amount you have allowed?

A. We have not.

[fol. 221] Q. You have not?

A. No, sir.

Q. It has not been set up on your books, neither has the money been set aside?

A. No, sir.

Q. Why not?

A. Because the earnings were not sufficient—strike that—the gross revenues received from customers in the Kenton district were not sufficient to cover operating expenses and give a return on the investment and provide for the annual retirement charges.

Q. Your theory then is that you had to make a net earning of say 8 per cent on your property before you set aside your amortization?

A. Yes, sir.

Q. And to date you have not earned that amount, is that correct?

A. No, sir.

Q. I understand you to say that the amount of amortization was determined on the allowance made in a former rate case?

A. Yes, sir.

Q. Now, in that former rate case, there was a different valuation fixed upon the property than there is in the present rate case, was there not?

A. Yes, sir.

Q. Then would not the amount of amortization chargeable to that line be changed in the present case in proportion to the present valuation?

A. I would assume so.

Q. And it is not so set up in your exhibits, here, though?

A. No, sir.

Q. And the present valuation for less than the former valuation, the amount chargeable or allowable to amortization or transmission line would be less?

A. Yes, sir.

Mr. Hebel: I do not think your presumption is correct, I think the valuation is a little higher, I think 182,000 before [fol. 222] and 190,000 this time.

Mr. Brown: I am assuming it was less. I was not positive of that.

The Witness: Your questions were predicated, "if" weren't they?

Q. The amount set up here in your exhibit for amortization on the transmission line, does not reflect the present condition in the present rate case, but is predicated upon a former rate case?

A. Yes, sir.

Q. The items and figures you gave in Exhibit 102 were figures actually taken from your records in Lima and Kenton?

A. As explained at the beginning of the direct testimony, the first column of figures appearing in this exhibit are the exact figures that were found on the records of the company.

Q. The greater portion of your records are maintained in the Lima office, aren't they?

A. Yes, sir.

Q. How many customers do you have in Kenton, approximately?

A. 1823 the last day of April this year.

Q. Has there been any appreciable change in your operating expenses between the year 1930 and the year 1931?

A. Has there been any appr-ciable change, you say in '30 against 1931?

Q. Yes.

A. According to schedule 1 of this exhibit, there is a decrease of $6300 in operating expenses.

Q. In operating expenses; a considerable portion of that amount is in the amount of gas purchased, is it not?

A. Yes, sir.

Q. So that your labor costs, costs of administration, material and supplies, have been about the same?

A. Approximately, so, yes, sir.

[fol. 223] Q. Labor costs at the present time are somewhat, or during 1930 and 1931, were somewhat less than they were during 1929, were they not?

A. I think so.

Q. And the same thing is true of material, is it not?

A. There has been some change, yes.

Q. But in hurriedly glancing over your exhibit, I notice that the general items relating to operation other than the amount of gas purchased, are substantially the same for each year?

A. Yes, sir.

Q. Very little variation?

A. Yes, sir.

Q. I notice in item 8 of your Exhibit 102, "New business," where expenses are set up; are the items set up in here—there is an item set up in here for the year 1931, that is on page 8, an item of $1664.07 total, was that for the Kenton office?

A. That is for the Kenton district, entire district of Kenton.

Q. That is for the entire district of Kenton?

A. Yes, sir.

Q. An item of demonstration set up there; what is that for?

A. What year, Mr. Brown?

Q. Well, for the three years, 1929, 1930 and 1931.

A. That is demonstrations made by the new business department in trying to convince or procure new customers to come on the company's line.

Q. Do you keep somebody employed at Kenton for the purpose of developing new business there?

A. No, sir.

Q. I notice the item of canvassing and soliciting for the year 1931 set up at $1288.47.

A. Yes, sir.

Q. And does that represent the time of some particular [fol. 224] individual employed for that purpose?

A. Yes, sir.

Q. In Kenton?

A. We have a new business department, the West Ohio Gas Company has a new business department and the men of this department go into each district that the company operates in, in their endeavor to increase gas sales, and the amount mentioned by you is the cost of our endeavor to procure new business in Kenton in the year 1931.

Q. Then that represents the time that they spent in the Kenton district?

A. Yes, sir.

Q. So, as I understand it, you move them about?

A. They are located in Lima and visit different districts.

Q. And that item in there is for the time that they spent in Kenton?

A. Yes, sir.

Q. How many employees in that department?

A. Three.

Q. Calling your attention now to page 9 of Exhibit 102; taking the first item, "Administrative salaries"; since 1929, covering the three years, 1929, 1930 and 1931, there has been no particular change in the amount there?

A. No, sir.

Q. And that is generally true of other office expenses, is it not; calling your attention to this page, "General Miscellaneous Expenses"; were those all expenditures that were made in the Kenton district?

A. No, sir.

Q. Or are they allocated to the Kenton district, page 9, general miscellaneous?

A. Pardon me just a minute, Mr. Brown, what year are you particularly inquiring about?

(Question read.)

A. We have some general expenses chargeable direct to the Kenton district and certain other expenses incurred in the line of office that are common or applicable to all the [fol. 225] districts as a whole, and the general expenses or expenses incurred by the company applicable to all the districts as a whole, that amount is allocated to each of the districts on the basis of gross revenue.

That is to say the entire amount of revenue derived by the company from entire gas sales in all these districts is determined, and then each district percentage relation of the whole is used as the basis on which the general expense is allocated.

Q. Calling your attention to page 9 here, I notice some items relating to contributions to charity, civic matters, dues to Chambers of Commerce and donations and so forth, were those donations that were made directly in the Kenton district or are they donations that were made by the company in the Lima district and allocated?

A. What year, Mr. Brown?

Q. Well, take this 3 year period from 1929, 1930 and 1931.

A. In the year 1931, $40, if you refer to page 16, under the column "Direct Expense."

Q. Oh, I see it is analyzed down in here, all right?

A. Now, that shows direct expenses of the Kenton district and sheet 15 shows the direct expenses for the year 1930, sheet 14 shows the direct expenses for the calendar year 1929, and sheet 13 shows the year ending August 1st, 1929.

Q. Under what theory do you think that an expenditure of that kind should be charged back to the rate consumers, or to your customers?

A. The company operates in various communities and should take an interest in everything pertaining to that community, and should take its part in such work as is usually carried on in the community, because the company is doing [fol. 226] business there, and should certainly maintain the same civic spirit that is perhaps maintained and displayed by the other business houses of that community, and as the community progresses, so does the company. The company likes to and usually does perform its duties in that particular respect, and I see no reason why any expenses the company has in the conduct of its business, why it should not be written up in its expenses the same as any other item of cost.

Q. In other words then, you consider that is an item of expenditure, such as that in setting up your rate structure, should be passed on to the consumers the same as any other item?

A. Yes, sir.

Q. Calling your attention to page 16, the year 1931, I note that there is apportioned to Kenton addition the sum of $559.09 for Midland Company service; what is that?

A. Our parent company, the Midland Company, maintains a staff of men who are very proficient in their particular lines and as we need their services we can call on the home office to send these men to us and give us the benefit of their knowledge and experience on any problems that might come to us, as the company does not maintain or employ engineers.

Q. Any of these problems that need the expert's attention arise in the Kenton district?

A. Yes, sir.

Q. What were they?

A. I have in mind just one that comes to me at this time. Some time ago our gas was supplied in Kenton from the Forest field, and I believe we received quite a large number of complaints from the customers on account of sulphur in the gas. We had one of the engineers came out of Chicago

and go over the situation in an effort to see if there was any-
[fol. 227] thing we could do from our angle before we got in touch with the supplying company as to the cause. Then if we have any pressure trouble on the distribution system, we can take advantage of the engineer in that respect and have him come into Kenton. They have visited Kenton on a number of occasions, I cannot recall them offhand at this moment.

Q. You are talking of the troubles of sulphur in the gas, wasn't that a problem for your producing company as well as your company?

A. We always try to see that our house is first in order before we go to the other fellow.

Q. You purchase from the Ohio Fuel & Gas Company, do you not?

A. We do.

Q. You purchase no gas from Forest?

A. We do not.

Q. So all the gas that you purchased is purchased from the Ohio Fuel Gas, is that true?

A. Yes, sir.

Q. And you pay them how much per thousand?

A. 55 cents per thousand cubic feet.

Q. Then this gas that came in from the Forest field you did not buy from anybody from around Forest?

A. No, sir, we only bought the gas from the Ohio Fuel Gas Company.

Q. So that if they furnished some gas out of that Forest district that was full of sulphur, it would be their problem to get rid of it?

A. Yes, sir.

Q. Any other service that was rendered by this Midland Company to the Kenton district other than what you have mentioned here such as the engineering problems?

A. If we have any accounting problems, they are prepared in gas engineering, construction work, maintenance work, operation, in fact any problems that we might have in the [fol. 228] gas business regardless of whether it is in operation, production, distribution, commercially, generally or what not, they are prepared to furnish us the service, and we only pay for the service that is rendered.

Q. Do you request the services, or do they send the men there themselves?

A. We request it.

Q. You request the services?

A. Yes, sir.

Q. And that company bills you for services and you pay them?

A. Yes, sir.

Q. They are not sent there then by the Midland Company other than at your request?

A. That is right.

Q. You maintain no gas engineers of your own?

A. No, sir.

Q. You maintain an accounting service of your own?

A. Yes, sir.

Q. The Ohio Fuel & Gas that furnishes your gas are supposed to furnish to you, or your company, such gas as is in such condition that it is fit for consumption, are they not?

A. I think so.

Q. Well now, when they furnished you gas that was obtained with a lot of sulphur that caused a lot of inconvenience to your customers, why shouldn't any expenses you had to go to concerning that product, not go back to them?

A. Perhaps it should.

Q. Did you attempt to charge back to the Ohio Fuel & Gas any cost that you were compelled to expend because of the fact that they furnished you a lot of the sulphur gas?

A. I do not recall at this time, that was four or five years ago.

Q. Has that been since 1929 or prior?

A. I think it was prior, but I am not sure. I think it was prior.

[fol. 229] Q. It run in my mind it was 1929, I remember when it happened; now, also calling your attention to page 16 to the item of $306.59 for stock and bond expenses; what is that?

A. That is the expense to the company for transfer agent, stock transfer office, in connection with the company's securities, and also the expense and being charged by the trustee under the general mortgage.

Q. And part of that expense is allocated to Kenton?

A. Yes, sir.

Q. The part that you set up here?

A. Yes, sir.

Q. The remainder is allocated to other districts?

A. Yes, sir.

Q. Is there in your exhibit here any record of the amount of unaccounted for gas?

A. No, sir.

Q. Do you have a record?

A. At our office, yes.

Q. In your office?

A. Yes.

Q. Do you know what percentage of unaccounted for gas you have in the Kenton district?

A. No, I do not remember it.

Q. You don't have that record with you?

A. I have no records on that subject with me.

Q. All the gas that was furnished to Kenton is natural gas?

A. Yes, sir.

Q. Do you have any other towns that you furnish gas to, that you furnish just natural gas to?

A. Yes, sir.

Q. What towns are they?

A. Cridersville, Wapokoneta, St. Marys and Celina, Ohio.

Q. In Lima you furnish both?

A. Manufactured gas in the Lima district.

Q. How is the rate at Kenton compared with the rate in [fol. 230] Cridersville, Wapakoneta, Celina and St. Mary's, higher or lower?

A. It is lower than it is in Wapakoneta, St. Marys and Celina.

Q. In other words then, those towns pay more for their natural gas than we do in Kenton?

A. Yes, sir.

By Commissioner Bricker:

Q. How do you explain that?

A. Well, they have—Wapakoneta, St. Marys and Celina have assumed the proportion of the value of the transmission line that does not enter into it; in other words the transmission line from Kenton to Wapakoneta is allocated to Wapakoneta, St. Marys and Celina. Then the stretch from Wapakoneta to St. Marys is allocated to St. Mary's and Celina, and the stretch from St. Mary's to Celina is allocated to Celina.

Q. You say these rates are higher than they are in Kenton?

A. Yes, sir.

Q. I thought you said the Kenton rate was higher?
A. No, sir, the three towns are higher.

Commissioner Bricker: You did say that.

The Witness: I desire to have that corrected, please.
Commissioner Bricker: I got the impression that the Kenton rates were the highest rates.

Q. Do those three towns all have the same rate?
A. Wapakoneta, St. Marys and Celina?
Q. Yes.
A. The rate at Wapakoneta, St. Marys and Celina is as follows, the first 400 cubic feet or less per month $1.25, the next 9600 cubic feet at $1.15, per 1000 cubic feet. The next 15,000 at $1.10 per thousand cubic feet. For all gas used over 25,000 at 90 cents per thousand cubic feet. The Kenton rate, you know that, Mr. Brown.
Q. Yes, I know what the Kenton rate is; Mr. Pringle, when [fol. 231] does your present contract with the Ohio Fuel & Gas expire?
A. As I recall, we have about 18 months yet to operate under that, in other words, it will be out on January 1st, 1934.
Q. I think you contemplate when that contract expires to make another contract with them?
A. I could not answer that, I never negotiate contracts with the company.
Q. They are negotiated by yourself?
A. No, sir.
Q. I understood you to say that all gas you purchased in the Lima district was gas purchased from the Ohio Fuel?
A. Yes, sir, all natural gas furnished by the Ohio Fuel.
Q. And you purchase from no other source?
A. No, sir.
Q. So that the gas produced from a number of these local wells is gas that is sold to the Ohio Fuel?
A. Yes, if we are supplied with any gas from these wells, it is purchased direct from the Ohio Fuel.
Q. Does that gas come through the transmission line that is set up here?
A. Yes, sir.

Mr. Brown: I think that is all.
Commissioner Bricker: Is that all? Any further witnesses?

Mr. Hebel: No, that is all.

Commissioner Bricker: This case will be set for further hearing. I suppose you want that on the first day of July at 10:00 o'clock in the morning.

And thereupon the further hearing of this case was adjourned until Friday, July 1st, 1932, at 10:00 o'clock A. M.

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[fol. 232] Tuesday Afternoon Session

July 19th, 1932.

And thereupon the further hearing of this matter was resumed, pursuant to adjournment, before Honorable E. J. Hopple, Chairman, and Frank W. Geiger, Public Utilities Commissioners.

Appearances:

Same parties present by their respective counsel as at previous session.

Chairman Hopple: The next matter for hearing at this time is case No. 5666, the appeal of the West Ohio Gas Company, Kenton, Ohio. The appearances are the same as before. You may proceed.

* * * * * * *

[fol. 233] Mr. Hebel: If it please the Commission, I would like to say that at the conclusion of the hearing in June Commissioner Bricker asked me to find out if I could the fact as to the relationship between the Utilities Securities Company and the Midland Utilities Company and the situation in reference to the sale of the preferred stock of the West Ohio Gas Company.

I find that the stock of the Utilities Securities Company is owned 10 per cent. by the Midland Utilities Company or the Midland United Company, I am not sure which, but they are both associated companies. That interest was [fol. 234] acquired in or about November 1924, and the company never has owned in excess of that 10 per cent. of the stock. The remaining stock is owned by the Commonwealth Edison Company, the People's Gas, Light &

Coke Company, the Public Service Company of Northern Illinois, and the Middle West Utilities Company.

The preferred stock of the West Ohio Gas Company was originally acquired by the Midland Utilities Company which at that time acquired the common stock of the West Ohio Gas Company. That stock was sold to the Midland Utilities Company at 87½ per cent, the price fixed by the Commission.

The earning situation at that time was not such that all the stock could be marketed, and there were two classes of preferred stock created, class A preferred stock, which consisted of 3000 shares of the 7500 shares authorized by the Commission to be issued, and a class B preferred stock, which consisted of the remaining 4500 shares, and which, in turn, was divided into three shares, one, two and three.

The class B preferred stock was made subordinate, both as to dividend payments and liquidation price, to the class A preferred stock.

The class A preferred stock was then placed on the market in May, 1925, which was about six months after the West Ohio Gas Company was organized, and it was sold over a period of about a year and a half, the sale being completed in November, 1926. The sale price of that stock to the public was $98.00, and the commissions paid to the selling company was $5.25 per share.

Under the charter of the West Ohio Gas Company the 4500 shares of class B preferred stock could not be con- [fol. 235] verted into class A preferred stock, until the earnings of the company had assumed certain proportions, the result being until that situation arose the class B preferred stock was entirely deferred to the class A, and it was not possible to dispose of it to the general public. It was not until the spring of 1931 that the class B stock was converted into class A preferred stock, the situation under which this conversion could take place having arisen in the meantime, and then in the early summer of 1931, an attempt was made to market the remaining 4500 shares of the preferred stock, it all being preferred stock of one class then.

That attempt resulted in the sale only of 833 shares of the preferred stock, which was sold at 98, and the Midland Company consequently had to retain and still retains the remaining shares, or about 3700 shares of the preferred stock.

The market price of the preferred stock of the West Ohio Gas Company at the present time—it is an unlisted stock, and is around $45.00 with practically no sales taking place.

That is the preferred stock history of the company that Mr. Bricker inquired about.

And thereupon the West Ohio Gas Company rested.

And thereupon the City of Kenton, Ohio, rested.

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[fol. 236] COMPANY EXHIBIT No. 2

Filed May 3, 1930. The Public Utilities Commission of Ohio

West Ohio Gas Company, Kenton District, Net Additions to Capital from August 1, 1926 to March 1, 1930

No. 5666

| | Aug. 1, 1926 to Aug. 1, 1929 | Aug. 1, 1929 to March 1, 1930 | Total |
|---|---|---|---|
| Distribution Lines | $1,220.55 | 4.24 | 1,224.79 |
| Service Lines | 323.73 | 79.76 | 403.49 |
| Meters and Installations | 128.56 | 193.22 | 64.66 |
| Connersville Meter (6x18) | 806.08 | ..... | 806.08 |
| Rehabilitation Mains | 757.40 | ..... | 757.40 |
| General Equipment | 145.90 | ..... | 145.90 |
| Automotive Equipment | 470.00 | ..... | 470.00 |
| General Office Structure To 2/28/30-$95,430.12 Allocate 12% | ..... | 11,451.61 | 11,451.61 |
| Totals | $3,852.22 | $11,342.39 | $15,194.61 |

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[fol. 237] COMPANY EXHIBIT No. 102

West Ohio Gas Company, Kenton District

Operating Expenses for Years Ended August 1, 1929, December 31, 1929, December 31, 1930, December 31, 1931

[fol. 238] West Ohio Gas Company, Kenton District

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6. Detailed Statement showing cost of Gas and Distribution Expenses
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[fol. 239] West Ohio Gas Company, Kenton District

1

Revenue and Expense Statement for Four 12-Month Periods Ending August 1, 1929, and December 31st, 1929–1930–1931

| Operating expenses— | Year ending Aug. 1, 1929 | Year 1929 | Year 1930 | Year 1931 |
|---|---|---|---|---|
| Natural Gas Purchased | $38,674.35 | $39,791.95 | $38,922.40 | $33,474.10 |
| Distribution Expenses | 3,478.21 | 3,531.54 | 3,027.26 | 2,982.65 |
| Commercial Expenses | 3,155.67 | 3,282.16 | 2,999.80 | 3,112.56 |
| New Business Expenses | 1,148.49 | 1,569.06 | 1,151.36 | 1,664.07 |
| General and Miscellaneous Expenses | 10,979.63 | 10,856.24 | 9,743.64 | 8,397.65 |
| Indirect Charges to Construction | 215.56* | 221.29* | 1,100.15* | 303.19* |
| Retirement Allowance | 4,154.58 | 4,154.58 | 4,154.58 | 4,154.58 |
| Allowance for Amortization of Pipe Line | 2,983.20 | 2,983.20 | 2,983.20 | 2,983.20 |
| Real and Personal Property Taxes | 2,538.15 | 2,716.97 | 2,840.41 | 2,260.00 |
| State of Ohio—Excise Tax | 1,226.31 | 1,195.30 | 1,262.11 | 1,063.95 |
| Tax for Maintenance of Public Utilities Commission | 47.84 | 46.20 | 46.32 | 46.20 |
| Federal Income Tax | 1,809.00 | 1,495.76 | 1,263.54 | 1,221.05 |
| Uncollectible Accounts | 485.65 | 521.44 | 407.18 | 362.32 |
| Total Cost of Operation | $70,465.52 | $71,923.11 | $67,701.65 | $61,419.14 |
| Gross Revenue from Operation | 84,787.36 | 86,220.19 | 80,357.26 | 72,278.21 |
| Net Applicable to Return on Valuation | $14,321.84 | $14,297.08 | $12,655.61 | $10,859.07 |

* Red in copy.

[fol. 240] West Ohio Gas Company, Kenton District

2

Revenue and Expense Statement for the Year Ended August 1, 1929

| | As shown on Company records | Adjustments | Total |
|---|---|---|---|
| Revenue from sales— | | | |
| Residence Service | $70,720.90 | ..... | $70,720.90 |
| House Heating Service | 276.70 | ..... | 276.70 |
| Commercial Service | 12,026.54 | ..... | 12,026.54 |
| Industrial Service | 1,663.85 | ..... | 1,663.85 |
| Miscellaneous Municipal Sales | 99.37 | ..... | 99.37 |
| Gross Revenue from Sale of Gas | $84,787.36 | ..... | $84,787.36 |
| Operating Expenses— | | | |
| Natural Gas Purchased | $38,674.35 | ..... | $38,674.35 |
| Distribution of Expense | 3,478.21 | ..... | 3,478.21 |
| Commercial Expense | 3,155.67 | ..... | 3,155.67 |
| New Business Expense | 1,148.49 | ..... | 1,148.49 |
| General and Miscellaneous Expense | (1)9,255.32 | 1,724.31 | 10,979.63 |
| Indirect Charges for Construction (Cr) | 215.56* | ..... | 215.56* |
| Retirement Allowance | (2)..... | 4,154.58 | 4,154.58 |
| Amortization of Pipe Line | (3)..... | 2,983.20 | 2,983.20 |
| Real and Personal Property Taxes | 2,538.15 | ..... | 2,538.15 |
| State of Ohio—Excise Tax | 1,226.31 | ..... | 1,226.31 |
| Tax for Maintenance of Public Util. Comm | 47.84 | ..... | 47.84 |
| Federal Income Tax | 1,809.00 | ..... | 1,809.00 |
| Uncollectible Accounts | 485.65 | ..... | 485.65 |
| Total Operating Expense | $61,603.43 | $8,862.09 | $70,465.52 |
| Gross Operating Income | 84,787.36 | ..... | $84,787.36 |
| Sales of Gas in Cubic Feet— | Cubic feet | | |
| Residence Service | 50,874,300 | | |
| House Heating Service | 373,700 | | |
| Commercial Service | 10,375,200 | | |
| Industrial Service | 1,717,000 | | |
| Miscellaneous Municipal Sales | 81,000 | | |
| Total Sales | 63,421,200 | | |

* Red in copy.

NOTES AND COMMENTS—

(1) Addition of $1,724.31 made to General and Miscellaneous Expense to cover Amortization of Rate Case Expense as shown on Schedule No. 10.

(2) Addition of $4,154.58 to Retirement Allowance made to give effect to total Retirement Allowance authorized by The Public Utilities Commission in official order dated January 31, 1927, Case No. 245.

(3) Addition of $2,983.20 to Amortization of Pipe Line made to give effect to total Amortization authorized by The Public Utilities Commission in official order dated Jan. 31, 1927, Case No. 245.

[fol. 241] West Ohio Gas Company, Kenton District

3

Revenue and Expense Statement for the Year Ended December 31, 1929

| | As shown on company records | Adjustments | Total |
|---|---|---|---|
| Revenue from sales— | | | |
| Residence Service | $71,928.69 | ..... | $71,928.69 |
| House Heating Service | 149.52 | ..... | 149.52 |
| Commercial Service | 11,550.51 | ..... | 11,550.51 |
| Industrial Service | 2,360.10 | ..... | 2,360.10 |
| Miscellaneous Municipal Sales | 231.37 | ..... | 231.37 |
| Gross Revenue from Sale of Gas | $86,220.19 | ..... | $86,220.19 |
| Operating Expenses— | | | |
| Natural Gas Purchased | $39,791.95 | ..... | 39,791.95 |
| Distribution Expenses | 3,531.54 | ..... | 3,531.54 |
| Commercial Expenses | 3,282.16 | ..... | 3,282.16 |
| New Business Expenses | 1,569.06 | ..... | 1,569.06 |
| General and Miscellaneous Expenses | (1)11,563.34 | 707.10* | 10,856.24 |
| Indirect Charges for Construction (Cr) | 221.29* | ..... | 221.29* |
| Retirement Allowance | (2)..... | 4,154.58 | 4,154.58 |
| Amortization of Pipe Line | (3)..... | 2,983.20 | 2,983.20 |
| Real & Personal Property Taxes | 2,716.97 | ..... | 2,716.97 |
| State of Ohio—Excise Tax | 1,195.30 | ..... | 1,195.30 |
| Tax for Maintenance of Ohio Public Util. Comm | 46.20 | ..... | 46.20 |
| Federal Income Tax | 1,495.76 | ..... | 1,495.76 |
| Uncollectible Accounts | 521.44 | ..... | 521.44 |
| Total Operating Expenses | $65,492.43 | $6,430.68 | $71,923.11 |
| Gross Operating Income | 86,220.19 | ..... | 86,220.19 |
| Sales of Gas in Cubic Feet— | Cubic feet | | |
| Residence Service | 52,222,800 | | |
| House Heating Service | 217,100 | | |
| Commercial Service | 9,855,800 | | |
| Industrial Service | 2,592,100 | | |
| Miscellaneous Municipal Sales | 232,800 | | |
| Total Sales | 65,120,600 | | |

* Red in copy.

NOTES AND COMMENTS—

(1) Deduction of $707.10* made to General and Miscellaneous Expense to cover Amortization of Rate Case Expense as shown on Schedule No. 10.

(2) Addition of $4,154.58 to Retirement Allowance made to give effect to total Retirement Allowance authorized by The Public Utilities Commission in official order dated Jan. 31, 1927, Case No. 245.

(3) Addition of $2,983.20 to Amortization of Pipe Line made to give effect to total Amortization authorized by The Public Utilities Commission in Official order dated January 31, 1927, Case No. 245.

fol. 242] West Ohio Gas Company, Kenton District

4

Revenue and Expense Statement for the Year Ended December 31, 1930

| | As shown on company records | Adjustments | Total |
|---|---|---|---|
| Revenue from Sales— | | | |
| Residence Service | $65,619.35 | ..... | $65,619.35 |
| House Heating Service | 249.25 | ..... | 249.25 |
| Commercial Service | 10,246.78 | ..... | 10,246.78 |
| Industrial Service | 3,397.23 | ..... | 3,397.23 |
| Miscellaneous Municipal Sales | 644.31 | ..... | 644.31 |
| Forfeited Discounts | 200.34 | ..... | 200.34 |
| Gross Revenue from Sale of Gas | $80,357.26 | ..... | $80,357.26 |
| Operating Expenses— | | | |
| Natural Gas Purchased | $38,922.40 | ..... | $38,922.40 |
| Distribution Expenses | 3,027.26 | ..... | 3,027.26 |
| Commercial Expenses | 2,999.80 | ..... | 2,999.80 |
| New Business Expenses | 1,151.36 | ..... | 1,151.36 |
| General and Miscellaneous Expenses | (1)6,814.93 | 2,928.71 | 9,743.64 |
| Indirect Charges for Construction (Cr) | 1,100.15* | ..... | 1,100.15* |
| Retirement Allowance | (2)..... | 4,154.58 | 4,154.58 |
| Amortization of Pipe Line | (3)..... | 2,983.20 | 2,983.20 |
| Real and Personal Property Taxes | 2,840.41 | ..... | 2,840.41 |
| State of Ohio—Excise Tax | 1,262.11 | ..... | 1,262.11 |
| Tax for Maintenance of Public Utilities Comm. | 46.32 | ..... | 46.32 |
| Federal Income Tax | 1,263.54 | ..... | 1,263.54 |
| Uncollectible Accounts | 407.18 | ..... | 407.18 |
| Total Operating Expenses | $57,635.16 | $10,066.49 | $67,701.65 |
| Gross Operating Income | $80,357.26 | ..... | $80,357.26 |
| Sales of Gas in Cubic Feet— | Cubic feet | | |
| Residence Service | 46,068,100 | | |
| House Heating Service | 294,800 | | |
| Commercial Service | 8,890,200 | | |
| Industrial Service | 3,763,800 | | |
| Miscellaneous Municipal Sales | 599,200 | | |
| Total Sales | 59,616,100 | | |

* Red in copy.

NOTES AND COMMENTS—

(1) Addition of $2,918.71 made to General and Miscellaneous Expense to cover Amortization of Rate Case Expense as shown on Schedule No. 10.

(2) Addition of $4,154.58 to Retirement Allowance made to give effect to total Retirement Allowance authorized by The Public Utilities Commission in official order dated Jan. 31, 1927, Case No. 245.

(3) Addition of $2,983.20 to Amortization of Pipe Line made to give effect to total Amortization authorized by The Public Utilities Commission in official order dated January 31, 1927, Case No. 245.

[fol. 243] West Ohio Gas Company, Kenton District

5

Revenue and Expense Statement for the Year Ended December 31, 1931

| | As shown on company records | Adjustments | Total |
|---|---|---|---|
| Revenue from Sales— | | | |
| Residence Service | $59,809.52 | ..... | $59,809.52 |
| House Heating Service | 213.62 | ..... | 213.62 |
| Commercial Service | 8,502.93 | ..... | 8,502.93 |
| Industrial Service | 2,909.81 | ..... | 2,909.81 |
| Miscellaneous Municipal Sales | 627.39 | ..... | 627.39 |
| Forfeited Discounts | 214.94 | ..... | 214.94 |
| Gross Revenue from Sale of Gas | $72,278.21 | ..... | $72,278.21 |
| Operating Expenses— | | | |
| Natural Gas Purchased | $33,474.10 | ..... | $33,474.10 |
| Distribution Expenses | 2,982.65 | ..... | 2,982.65 |
| Commercial Expenses | 3,112.56 | ..... | 3,112.56 |
| New Business Expenses | 1,664.07 | ..... | 1,664.07 |
| General and Miscellaneous Expenses | (1)5,468.94 | 2,928.71 | 8,397.65 |
| Indirect Charges for Construction (Cr) | 303.19* | ..... | 303.19* |
| Retirement Allowance | (2)..... | 4,154.58 | 4,154.58 |
| Amortization of Pipe Line | (3)..... | 2,983.20 | 2,983.20 |
| Real and Personal Property Taxes | 2,260.00 | ..... | 2,260.00 |
| State of Ohio—Excise Tax | 1,063.95 | ..... | 1,063.95 |
| Tax for Maintenance of Public Utilities Comm | 46.20 | ..... | 46.20 |
| Federal Income Tax | (4)..... | 1,221.05 | 1,221.05 |
| Uncollectible Accounts | 362.32 | ..... | 362.32 |
| Total Operating Expenses | $50,131.60 | $11,287.54 | $61,419.14 |
| Gross Operating Income | $72,278.21 | ..... | $72,278.21 |
| Sales of Gas in Cubic Feet— | Cubic feet | | |
| Residence Service | 40,637,700 | | |
| House Heating Service | 256,400 | | |
| Commercial Service | 7,148,800 | | |
| Industrial Service | 3,325,800 | | |
| Miscellaneous Municipal Sales | 577,600 | | |
| Total Sales | 51,946,300 | | |

* Red in copy.

NOTES AND COMMENTS—

(1) Addition of $2,928.71 made to General and Miscellaneous Expense to cover Amortization of Rate Case Expense as shown on Schedule No. 10.

(2) Addition of $4,154.58 to Retirement Allowance made to give effect to total Retirement Allowance authorized by The Public Utilities Commission in official order dated January 31, 1927, Case No. 245.

(3) Addition of $2,983.20 to Amortization of Pipe Line made to give effect to total Amortization authorized by The Public Utilities Commission in official order dated January 31, 1927, Case No. 245.

(4) Addition of $1,221.05 made to cover Kenton Portion of Company liability under Federal Income Tax Law.

Detailed Statement of Cost of Gas and Distribution Expenses for the Years Ended August 1, 1929 and December 31, 1929–1930 and 1931

| Cost of gas | Year ended Aug. 1, 1929 | Year 1929 | Year 1930 | Year 1931 |
|---|---|---|---|---|
| Natural Gas Purchased | $38,674.35 | $39,791.95 | $38,922.40 | $33,474.10 |
| Total Cost of Gas | $38,674.35 | $39,791.95 | $38,922.40 | $33,474.10 |
| Distribution Expenses— | | | | |
| Superintendence | 1,446.51 | 1,551.06 | 1,342.93 | 1,306.72 |
| Maps and Records | ..... | ..... | ..... | 28.57 |
| Operating Labor | 73.27 | 72.97 | 286.78 | 332.98 |
| Supplies and Expenses | 237.70 | 248.11 | 266.45 | 154.64 |
| Maintenance Installations—Customer's Premises | ..... | ..... | 27.94 | 1.38 |
| Work on Customers Premises | 290.60 | 327.03 | 285.98 | 335.80 |
| Changing Customers Meters | ..... | ..... | 119.90 | 129.21 |
| Turn on and Turn off Meter Expenses | 397.55 | 320.07 | 229.51 | 234.36 |
| Total Operation | $2,445.63 | $2,519.24 | $2,559.49 | $2,523.66 |
| Maintenance of Mains | 98.71 | 79.40 | 13.71 | 12.09 |
| Maintenance of Vaults and Governors | ..... | ..... | ..... | 5.00 |
| Maintenance of Services | 104.37 | 76.56 | 21.28 | 40.50 |
| Maintenance of Customers Meters | 701.26 | 647.05 | 252.03 | 340.64 |
| Maintenance of Dist. Implements and Accessories | 13.13 | 11.21 | 17.28 | 5.00 |
| Maintenance of Gas Appliances | 115.11 | 198.08 | 163.47 | 55.76 |
| Total Maintenance | $1,032.58 | $1,012.30 | $467.77 | $458.99 |
| Total Distribution Expense | $3,478.21 | $3,531.54 | $3,027.26 | $2,982.65 |

[fol. 245] West Ohio Gas Company, Kenton District

7

Detailed Statement of Commercial Expenses for Year Ended August 1, 1929 and December 31, 1929–1930 and 1931

| Commercial expenses | Year ended Aug. 1, 1929 | Year 1929 | Year 1930 | Year 1931 |
|---|---|---|---|---|
| Commercial General Labor | $970.03 | $955.30 | $858.97 | $882.63 |
| Commercial Bookkeeping | 260.16 | 260.16 | 271.36 | 260.16 |
| Commercial Contracts | 259.92 | 259.92 | 259.92 | 259.92 |
| Commercial Collecting | 183.24 | 190.68 | 148.65 | 157.50 |
| Commercial Meter Reading | 423.83 | 443.93 | 429.05 | 418.40 |
| Commercial Supplies and Expenses | 1,058.49 | 1,172.17 | 1,031.85 | 1,133.95 |
| Total Commercial Expenses | $3,155.67 | $3,282.16 | $2,999.80 | $3,112.56 |

[fol. 246] West Ohio Gas Company, Kenton District

8

Detailed Statement of New Business Expense for the Years Ended August 1, 1929 and December 31st, 1929–1930 and 1931

| New business expenses | Year ended Aug. 1, 1929 | Year 1929 | Year 1930 | Year 1931 |
|---|---|---|---|---|
| Management Salaries | $358.81 | $346.54 | $55.33 | $163.92 |
| Demonstrations | 158.38 | 87.58 | 71.22 | 52.58 |
| Advertising | 168.29 | 300.69 | 221.98 | 89.39 |
| Canvassing and Soliciting | 322.52 | 672.87 | 758.60 | 1,288.47 |
| New Business Supplies and Expenses | 140.49 | 161.38 | 44.23 | 69.71 |
| Total New Business Expenses | $1,148.49 | $1,569.06 | $1,151.36 | $1,664.07 |

General and Miscellaneous Expenses for the Years ended August 1, 1929, Years 1929–1930 and 1931

| General and miscellaneous expenses | Year ended Aug. 1, 1929 | Year 1929 | Year 1930 | Year 1931 |
|---|---|---|---|---|
| Administrative Salaries | $1,689.82 | $1,786.11 | $2,348.83 | $1,786.77 |
| Other General Office Salaries | 1,335.07 | 1,342.32 | 1,155.56 | 989.60 |
| General Office Supplies and Expenses | 471.94 | 461.59 | 350.62 | 192.89 |
| General Stationery and Printing | 66.60 | 73.19 | 84.31 | 124.80 |
| Operation of General Structures | ..... | ..... | ..... | 141.00 |
| Maintenance of General Structures | 1.56 | 1.05 | .47 | 27.20 |
| Maintenance of General Office Equipment | ..... | ..... | 45.87 | 3.16 |
| Law Expense | 164.68 | 187.64 | 255.33 | 612.49 |
| Insurance | 311.44 | 327.82 | 305.19 | 295.21 |
| Inventory Expense | 41.60 | 69.68 | 74.39 | ..... |
| Undistributed Adjustments | 15.61* | 242.87 | 101.50* | 22.09 |
| Annual Local Charitable Contributions | 73.78 | ..... | ..... | 40.00 |
| Occasional Civic and Charitable Special Fund | ..... | 45.00 | 6.81 | 8.00 |
| Contribution for Sustaining Chamber of Commerce | ..... | ..... | 70.00 | ..... |
| Other Donations | 2.00 | 2.00 | 6.05 | 11.00 |
| Chamber of Commerce Membership Dues | 14.53 | 30.35 | 30.52 | 38.79 |
| Other Association Expenses | 87.15 | 72.90 | 51.07 | 72.76 |
| Miscellaneous General Expenses | 570.87 | 681.47 | 433.46 | 231.50 |
| General Publicity and Advertising | 207.42 | 268.78 | 166.66 | 123.66 |
| Annual Reports and Bulletins | ..... | ..... | 85.92 | 9.46 |
| Consulting Engineers | ..... | ..... | 9.00 | ..... |
| Annual Audits | 77.57 | 95.69 | 54.29 | 56.33 |
| Medical Expenses | ..... | ..... | .42 | ..... |
| Injuries to Employees | 9.28* | ..... | ..... | 7.71 |
| Other Personal Injuries and Property Damage | 115.23 | 115.23 | .07 | ..... |
| Regulatory Commission Expenses | 3,200.00 | 4,800.00 | ..... | ..... |
| Employees Insurance | 87.25 | 110.85 | 120.60 | ..... |
| Safety Department | ..... | ..... | 40.38 | 6.90 |
| Miscellaneous Welfare Expenses | 100.11 | 105.41 | 5.14 | ..... |
| Pensions | ..... | 43.90 | 241.50 | ..... |
| Duplicate Miscellaneous Charges (Cr.) | 257.98* | 393.15* | 230.65* | 197.86* |
| Stock and Bond Expenses | 263.82 | 290.77 | 258.95 | 306.39 |
| Midland Company Services | 655.75 | 801.87 | 945.67 | 559.09 |
| Total General and Miscellaneous Expense | $9,255.32 | $11,563.34 | $6,814.93 | $5,468.94 |

* Red in copy.

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[fol. 248]

West Ohio Gas Company, Kenton District

10

Statement Total Cost of Kenton Rate Cases, July 1, 1926, to December 31, 1931

| Rate Case No. 1 Expense | July 1 to Dec. 31, 1926 | 1927 | 1928 | Total |
|---|---|---|---|---|
| Legal expense | $996.23 | $4,503.17 | $5,083.36 | $10,582.76 |
| Expenses incidental to Rate Case Hearings | 170.70 | 717.62 | 453.34 | 1,341.66 |
| Valuation Expense | 1,850.00 | 250.00 | ..... | 2,100.00 |
| Stenographic-Transcripts-Maps-Etc | 58.98 | 383.92 | 11.05* | 431.85 |
| Surety Bond Premiums | 90.00 | 90.00 | 100.00 | 280.00 |
| Miscellaneous Expenses | 5.85 | 10.95 | 19.40 | 36.20 |
| Total | $3,171.76 | $5,955.66 | $5,645.04 | $14,772.47(1) |
| Less amount written off during year 1928, $400.00, and in year 1929, $4,800.00 | | | | 5,200.00 |
| Balance Rate Case No. 1, Dec. 31, 1929 | | | | $9,572.47 |

| Rate Case No. 2 Expense | July 1st to Dec. 31, 1929 | 1930 | 1931 | 4 Mos.—Year 1932 | Total |
|---|---|---|---|---|---|
| Legal Expense | 856.90 | 1,120.00 | 646.08 | 410.51 | $3,032.59 |
| Expenses Incidental to Rate Case Hearings | 96.00 | 96.00 | 51.10 | 20.49 | 263.59 |
| Valuation Expense | 3,018.73 | 766.35 | 544.55 | 397.08 | 4,726.81 |
| Stenographic-Transcripts-Maps-Etc | ..... | 91.00 | 8.40 | ..... | 99.40 |
| Surety Bond Premiums | 200.00 | 200.00 | 350.00 | 100.00 | 650.00 |
| Miscellaneous Expense | 7.00 | 6.75 | ..... | ..... | 13.75 |
| Total | $4,177.73 | $2,280.10 | $1,600.23 | $728.08 | $8,786.14 (2) |
| Less amount written off first 4 Mos. 1932 | | | | | 268.60 |
| Balance Rate Case No. 2, Apr. 30, 1932 | | | | | $8,517.54 |

| Case No. 1 | Last 5 months year 1926 | Year 1927 | Year 1928 | First 7 mos. 1929 | Total |
|---|---|---|---|---|---|
| Monthly Charge $410.34 | $2,051.70 | $4,924.08 | $4,24.08 | $2,872.61 | $14,772.47 |

| Case No. 2 | Last 5 months year 1929 | Year 1930 | Year 1931 | First 7 months year 1932 | Total |
|---|---|---|---|---|---|
| Monthly Charge $244.05 | $1,220.29 | $2,928.71 | $2,928.71 | $1,708.43 | $8,786.14 |

| Exhibit Distribution | Case No. 1 | Write off | Total |
|---|---|---|---|
| For Year Ending 8-1-29 | $4,924.31 | $3,200.00 | $1,724.31 |
| " " " 12-31-29 | 2,872.61 | 4,800.00 | $1,927.39* |

| Exhibit Distribution | Case No. 2 | Write off | Total |
|---|---|---|---|
| Last 5 Mos.—Year 1929 | $1,220.29 | ..... | $1,220.29 |
| Year 1930 | 2,928.71 | ..... | 2,928.71 |
| Year 1931 | 2,928.71 | ..... | 2,928.71 |

*Red in copy.

NOTES AND COMMENTS—

(1) The company filed a schedule of rates with The Public Utilities Commission to become effective August 1, 1926. The Commission entered final order in the case on January 31, 1927. Shortly thereafter the personnel of the Commission changed and the City of Kenton petitioned the new Commission for rehearing, which was granted. The new Commission completed the case and issued final order on March 1, 1928. The Company appealed the case to the Federal Court and that Court on December 14, 1928 granted a permanent injunction. The total cost of this case, designated as Rate Case No. 1, amounted to $14,772.47, of that amount $400.00 was written off during year 1928 and $4,800.00 during year 1929, total amount written off $5,200.00.

(2) On July 17, 1929 the City of Kenton passed a two (2) year rate ordinance, which was not accepted by the Company. The total cost of this case, designated Rate Case No. 2, amounted to $8,786.14 to May 1, 1932. During the first four months of 1932, $268.60 of the total cost of the case was written off.

Rate Case No. 1 to be written off over a thirty-six (36) month period, beginning Aug. 1, 1926 and ending July 31, 1929—1/36 of total cost of $14,772.47 allocated to each month.

Rate Case No. 2 to be written off over a thirty-six (36) month period, beginning Aug. 1, 1929 and ending July 31, 1932—1/36 of total cost of $8,786.14 allocated to each month.

[fol. 249] West Ohio Gas Company, Kenton District

11

Commercial Expenses Giving Effect to Charges Account of Joint District Expenses Apportioned for Year Ending December 31, 1931

| Commerical expenses | Total direct expense | Amount apportioned | Total commercial expense |
|---|---|---|---|
| Commercial General Labor | 736.27 | $146.36 | $882.63 |
| " Bookkeeping | 260.16 | ..... | 260.16 |
| " Contracts | 259.92 | ..... | 259.92 |
| " Collecting | 157.50 | ..... | 157.50 |
| " Meter Reading | 418.40 | ..... | 418.40 |
| " Supplies and Expenses | 1,063.93 | 70.02 | 1,133.95 |
| Total Commercial Expenses | $2,896.18 | $216.38 | $3,112.56 |

NOTE.—During the year 1931 customers gas bills for all districts were prepared in the Lima office. The above charges showing as amounts apportioned were arrived at, by determining the billing department expense. The expense of the department was apportioned each month to each operating district of the company on the basis of the number of customers. A total of $740.51 is the amount apportioned during the year. 67.64% of total amount apportioned was cost of Labor and 32.36% cost of supplies. The amount ($216.38) apportioned to Kenton is divided to Labor and Supplies on the same percentage basis as mentioned herein.

In prior years such expenses were charged direct to the operating districts and apportionments were not necessary.

[fol. 250] West Ohio Gas Company, Kenton District

12

New Business Expenses—Giving Effect to Charges Account of Joint District Expenses Apportioned—For Year ended December 31, 1931

| New business expenses | Total direct expense | Amount apportioned | Total new business expense |
|---|---|---|---|
| Management Salaries | ..... | 163.92 | 163.92 |
| Demonstrations | 1.64 | 50.94 | 52.58 |
| Advertising | ..... | 89.39 | 89.39 |
| Canvassing and Soliciting | 779.15 | 509.32 | 1,288.47 |
| New Business Supplies and Expenses | 9.50 | 60.21 | 69.71 |
| Total New Business Expenses | 790.29 | 873.78 | 1,664.07 |

NOTE.—During the year 1931 certain new business expenses were incurred in the Lima office which were joint expenses common to all operating districts. Such joint expenses were apportioned on the basis of meters in service. The apportionable expenses for year 1931 amounted to $8,226.42. Of this amount 18.76% was charged to Salaries—5.83% to Demonstrations—10.23% to Advertising—58.29% to Canvassing and Soliciting and 6.89% to Supplies and Expenses.

[fol. 251] West Ohio Gas Company, Kenton District

13

General and Miscellaneous Expenses—Giving Effect to Charges Account of Joint District Expenses Apportioned—For the Year ended August 1, 1929

| General and miscellaneous expenses | Direct expense | Apportioned | Total |
|---|---|---|---|
| Administrative Salaries | ..... | $1,689.82 | $1,689.82 |
| Other General Office Salaries | ..... | 1,335.07 | 1,335.07 |
| General Office Supplies and Expenses | ..... | 471.94 | 471.94 |
| General Stationery and Printing | ..... | 66.60 | 66.60 |
| Maintenance of General Structures | ..... | 1.56 | 1.56 |
| Law Expense | 40.00 | 124.68 | 164.68 |
| Insurance | 58.44 | 253.00 | 311.44 |
| Inventory Expense | ..... | 41.60 | 41.60 |
| Undistributed Adjustments | ..... | 15.61* | 15.61* |
| Annual Local Charitable Contributions | ..... | 73.78 | 73.78 |
| Other Donations | 2.00 | ..... | 2.00 |
| Chamber of Commerce Membership Dues | 10.00 | 4.53 | 14.53 |
| Other Association Expenses | ..... | 87.15 | 87.15 |
| Miscellaneous General Expenses | 10.00 | 560.87 | 570.87 |
| General Publicity and Advertising | ..... | 207.42 | 207.42 |
| Annual Audits | ..... | 77.57 | 77.57 |
| Injuries to Employees | ..... | 9.28* | 9.28* |
| Other Personal Injuries and Property Damage | ..... | 115.23 | 115.23 |
| Regulatory Commission Expenses | 3,200.00 | ..... | 3,200.00 |
| Employees Insurance | ..... | 87.25 | 87.25 |
| Miscellaneous Welfare Expense | ..... | 100.11 | 100.11 |
| Duplicate Miscellaneous Charges (Cr.) | 126.26* | 131.72* | 257.98* |
| Stock and Bond Expenses | ..... | 263.82 | 263.82 |
| Midland Company Services | ..... | 655.75 | 655.75 |
| Total General & Miscellaneous Exp. | $3,194.18 | $6,061.14 | $9,255.32 |

* Red in copy.

NOTE.—Certain expenses are incurred by the General Office in Lima for the benefit of the Company as a whole. These expenses are apportioned each month to the operating districts of the company in the same ratio as to that which the gross revenue from gas sales of each district during the month bears to the gross revenue from gas sales of the entire company during the same month.

The amount shown above as apportioned is equal to 11.507% of the total apportionable expense.

[fol. 252] West Ohio Gas Company, Kenton District

14

General and Miscellaneous Expenses—Giving Effect to Charges Account of Joint District Expenses Apportioned—for the Year Ended December 31, 1929

| General and miscellaneous expenses | Direct expense | Amounts apportioned | Total |
|---|---|---|---|
| Administrative Salaries | ..... | $1,786.11 | $1,786.11 |
| Other General Office Salaries | ..... | 1,342.32 | 1,342.32 |
| General Office Supplies & Expenses | 1.25 | 460.34 | 461.59 |
| General Stationery and Printing | ..... | 73.19 | 72.19 |
| Maintenance of General Structures | ..... | 1.05 | 1.05 |
| Law Expenses | 45.00 | 142.64 | 187.64 |
| Insurance | 61.03 | 266.79 | 327.82 |
| Inventory Expense | ..... | 69.68 | 69.68 |
| Undistributed Adjustments | ..... | 242.87 | 242.87 |
| Occasional Civic and Charitable Spec. Funds | 45.00 | ..... | 45.00 |

| General and miscellaneous expenses | Direct expense | Apportioned | Total |
|---|---|---|---|
| Other Donations | 2.00 | ..... | 2.00 |
| Chamber of Commerce Membership Dues | 20.00 | 10.35 | 30.35 |
| Other Association Expenses | ..... | 72.90 | 72.90 |
| Miscellaneous General Expenses | ..... | 681.47 | 681.47 |
| General Publicity and Advertising | ..... | 268.78 | 268.78 |
| Annual Audits | ..... | 95.69 | 95.69 |
| Other Personal Injuries & Property Damage | ..... | 115.23 | 115.23 |
| Regulatory Commission Expenses | 4,800.00 | ..... | 4,800.00 |
| Employees Insurance | ..... | 110.85 | 110.85 |
| Miscellaneous Welfare Expenses | ..... | 105.41 | 105.41 |
| Pensions | ..... | 43.90 | 43.90 |
| Duplicate Miscellaneous Charges (Cr.) | 217.15* | 176.00* | 393.15* |
| Stock and Bond Expenses | ..... | 290.77 | 290.77 |
| Midland Company Services | ..... | 801.87 | 801.87 |
| Total General & Miscellaneous Expenses | $4,757.13 | $6,806.21 | $11,563.34 |

* Red in copy.

NOTE.—Certain expenses are incurred by the General Office in Lima for the benefit of the company as a whole. These expenses are apportioned each month to the operating districts of the company in the same ratio as to that which the gross revenue from gas sales of each district during the month bears to the gross revenue from gas sales of the entire company during the same month. The amount shown above as apportioned is equal to 11.524% of the total apportionable expense.

[fol. 253] West Ohio Gas Company, Kenton District

15

General and Miscellaneous Expenses—Giving Effect to Charges Account of Joint District Expenses Apportioned—for the Year Ended December 31, 1930

| General and miscellaneous expenses | Direct expense | Apportioned | Total |
|---|---|---|---|
| Administrative Salaries | ..... | $2,348.83 | $2,348.83 |
| Other General Office Salaries | ..... | 1,155.56 | 1,155.56 |
| General Office Supplies & Expenses | 1.60 | 349.02 | 350.62 |
| General Stationery and Printing | ..... | 84.31 | 84.31 |
| Maintenance of General Structures | ..... | .47 | .47 |
| Maintenance of General Office Equipment | ..... | 45.87 | 45.87 |
| Law Expense | 1.24 | 254.09 | 255.33 |
| Insurance | 73.51 | 231.68 | 305.19 |
| Inventory Expense | ..... | 74.39 | 74.39 |
| Undistributed Adjustments | ..... | 101.50* | 101.50* |
| Contribution for Sus. Chamber of Commerce | 70.00 | ..... | 70.00 |
| Occasional Civic & Charitable Spec. Fund | 2.00 | 4.81 | 6.81 |
| Other Donations | 6.05 | ..... | 6.05 |
| Chamber of Commerce Membership Dues | 20.00 | 10.52 | 30.52 |
| Other Association Expenses | ..... | 51.07 | 51.07 |
| Miscellaneous General Expense | 8.94 | 424.52 | 433.46 |
| General Publicity and Advertising | 1.40 | 165.26 | 166.66 |
| Annual Reports and Bulletins | ..... | 85.92 | 85.92 |
| Consulting Engineers | ..... | 9.00 | 9.00 |
| Annual Audits | ..... | 54.29 | 54.29 |
| Medical Expenses | ..... | .42 | .42 |

| General and miscellaneous expenses | Direct expense | Amounts apportioned | Total |
|---|---|---|---|
| Other Personal Injuries & Property Damage | ..... | .07 | .07 |
| Employees Insurance | ..... | 120.60 | 120.60 |
| Safety Department | ..... | 40.38 | 40.38 |
| Miscellaneous Welfare Expenses | ..... | 5.14 | 5.14 |
| Pensions | ..... | 241.50 | 241.50 |
| Duplicate Miscellaneous Charges (Cr.) | 116.15* | 114.50* | 230.65* |
| Stock and Bond Expenses | ..... | 258.95 | 258.95 |
| Midland Company Services | ..... | 945.67 | 945.67 |
| Total General & Miscellaneous Expense | $68.59 | $6,746.34 | $6,814.93 |

* Red in copy.

NOTE.—Certain expenses are incurred by the General Office in Lima for the benefit of the company as a whole. These expenses are apportioned each month to the operating districts of the company in the same ratio as to that which the gross revenue from gas sales of each district during the month bears to the gross revenue from gas sales of the entire company during the same month. The amount shown above as apportioned is equal to 11.353% of the total apportionable expense.

[fol. 254] West Ohio Gas Company, Kenton District

16

General and Miscellaneous Expenses—Giving Effect to Charges Account of Joint District Expenses Apportioned—for the Year Ended December 31, 1931

| General and miscellaneous expenses | Direct expenses | Apportioned | Total |
|---|---|---|---|
| Administrative Salaries | ..... | $1,786.77 | $1,786.77 |
| Other General Office Salaries | ..... | 989.60 | 989.60 |
| General Office Supplies & Expenses | 16.10 | 176.79 | 192.89 |
| General Stationery and Printing | ..... | 124.80 | 124.80 |
| Operation of General Structures | ..... | 141.00 | 141.00 |
| Maintenance of General Structures | ..... | 27.20 | 27.20 |
| Maintenance of Office Equipment—General | ..... | 3.16 | 3.16 |
| Law Expense | ..... | 612.49 | 612.49 |
| Insurance | 71.71 | 223.50 | 295.21 |
| Undistributed Adjustments | ..... | 22.09 | 22.09 |
| Annual Local Charitable Contributions | 40.00 | ..... | 40.00 |
| Occasional Civic & Charitable Spec. Fund | 8.00 | ..... | 8.00 |
| Other Donations | 11.00 | ..... | 11.00 |
| Chamber of Commerce Membership Dues | 20.00 | 18.79 | 38.79 |
| Other Association Expenses | 14.50 | 58.26 | 72.76 |
| Miscellaneous General Expense | 7.50 | 224.00 | 231.50 |
| General Publicity and Advertising | 8.00 | 115.66 | 123.66 |
| Annual Reports and Bulletins | ..... | 9.46 | 9.46 |
| Annual Audits | ..... | 56.33 | 56.33 |
| Injuries to Employees | ..... | 7.71 | 7.71 |
| Safety Department | ..... | 6.90 | 6.90 |

| General and miscellaneous expenses | Direct expense | Apportioned | Total |
|---|---|---|---|
| Duplicate Miscellaneous Charges (Cr) | 101.36* | 96.50* | 197.86* |
| Stock and Bond Expenses | ..... | 306.39 | 306.39 |
| Midland Company Services | ..... | 559.09 | 559.09 |
| Total General & Miscellaneous Expense | $95.45 | $5,373.49 | $5,468.94 |

* Red in copy.

NOTE.—Certain expenses are incurred by the General Office in Lima for the benefit of the company as a whole. These expenses are apportioned each month to the operating districts of the company in the same ratio as to that which the gross revenue from gas sales of each district during the month bears to the gross revenue from gas sales of the entire company during the same month. The amount shown above as apportioned is equal to 10.275% of the total apportionable expense.

[fol. 254a] KENTON COMPANY EXHIBIT #103

[fol. 255] West Ohio Gas Company

Statement Showing the Cost of Money Secured Through the Sale of Securities

Bonds

| | | |
|---|---|---|
| Description: —First and Refunding Mortgage 6% Gold Bonds consisting of original issue dated December 1, 1924 and supplemental issue dated June 1, 1931, maturing December 1, 1954. | | |
| Amount:—Principal amount of Bonds issued | | $1,300,000.00 |
| Original issue, 12–1–24 | $1,000,000.00 | |
| Supplemental issue, 6–1–31 | 300,000.00 | |
| | $1,300,000.00 | |
| Proceeds—Amount realized by the company through the sale of entire issue to the Halsey Stuart Company | | 1,178,000.00 |
| Original issue | $890,000.00 | |
| Supplemental issue | 288,000.00 | |
| | $1,178,000.00 | |
| Discount:—Discount Allowed | | 122,000.00 |
| Expenses:—Cost of sale including Legal, Printing and other expenses | | 8,244.21 |
| Original Issue | 6,552.02 | |
| Supplemental Issue | 1,692.19 | |
| | $8,244.21 | |
| Annual Cost of Money:—Interest Charges | $78,000.00 | |
| Discount and expense to be amortized annually | 4,467.60 | |
| Federal Tax at source (average) | 650.04 | |
| State Tax (average) | 172.38 | |
| Federal and state tax on supplemental issue being based on average experience in connection with original issue. | | |
| Total annual cost | | $83,290.02 |
| Annual Cost %—Annual Cost to Company expressed in Per Cent. | | 7.07+ |
| Yield to Purchaser | | 6.97+ |
| Average Sale Price Per $100.00 | | |
| Average sale price per $100.00 face value | | $90.61 |
| Original Issue | $1,000,000.00 @ $89.00 | |
| Supplemental Issue | 300,000.00 @ 96.00 | |

[fol. 256]

Stock

| | |
|---|---|
| Cumulative 7% Preferred Stock—$100.00 par value: | |
| 7500 shares x $100.00 | $750,000.00 |
| Discount 12½ | 93,750.00 |
| Amount received from sale of stock at 87½ | 656,250.00 |
| Dividend Requirements | 52,500.00 |
| Effective Rate of Return | 8% |

[fol. 257] COMMISSION EXHIBIT No. 1

The Public Utilities Commission of Ohio

Columbus, August 29, 1931.

Formal Case No. 5666

Mr. William Roger Dwyer, Chief Engineer, Office.

DEAR SIR: Assisted by Commission Engineers H. T. Garrett and A. B. Seitz, Jr. I made an inventory of the property of The West Ohio Gas Company used and useful in the furnishing of natural gas to the residents of Kenton and vicinity. That portion of the property of The West Ohio Gas Company used jointly in serving Lima, Kenton and other Ohio cities and villages, has been taken from the valuation in the Lima case and the proportion chargeable to Kenton allocated in this case.

Inspection in the field was made of practically all visible property together with numerous inspections scattered around Kenton to determine insofar as possible the true existing condition of the transmission and distribution mains and gas services.

The same overheads were applied in this case as were used in the Lima Gas Case of The West Ohio Gas Company, now pending before this Commission.

Attached to this report are two letters, one from Mr. E. R. Curtin, President of The West Ohio Gas Company and the other from John H. Pfeiffer, City Solicitor of Kenton, Ohio, together with the final summary sheet showing, in my opinion, the value of the property of The West Ohio Gas Company as of August 15, 1929, used and useful in furnishing gas service to Kenton, Ohio, and vicinity. The attached letters and summary sheet are, I believe, self explanatory.

Yours very truly, (Signed) O. F. Foster, Engineer.

OFF:HH.

[fol. 258] COMMISSION EXHIBIT No. 2

The Public Utilities Commission of Ohio

Columbus, September 14, 1931.

Formal Case No. 5666

Mr. Ira E. Sprankle, Supt. of Investigation, Office.

DEAR SIR: I am returning to you herewith all papers in the matter of the appeal of The West Ohio Gas Company from the Ordinance passed by the City of Kenton, Ohio, July 16, 1929, Ordinance No. 663, fixing the maximum price to be charged for gas in the City of Kenton, Ohio, for a period of two years commencing on the 16th day of August 1929, together with a copy of the report of Engineer C. F. Foster, who assisted by Engineers H. T. Garrett and A. B. Seitz, Jr., made an inventory of the property of The West Ohio Gas Company used and useful in the furnishing of natural gas to the residents of Kenton and vicinity.

You will note that Engineers Foster, Garrett and Seitz have made an inspection in the field of practically all visible property for the purpose of determining as far as possible the true existing condition of the transmission and distribution mains and gas services.

That portion of the property of The West Ohio Gas Company used jointly in serving Lima, Kenton and other Ohio cities and villages, consisting principally of transmission lines, was valued in connection with Formal Case No. 5137 known as the Lima Case and the proportion chargeable to Kenton has been determined on the basis of consumption in Kenton in relation to the consumption in the other cities and villages served from this transmission line.

The same overheads were applied in this case as were used in the Lima Gas Case, Formal Proceeding No. 5137.

Attention is also directed to two letters attached to Engineer Foster's report, one from Mr. E. R. Curtin, President of The West Ohio Gas Company and the other from Mr. John H. Pfeiffer, City Solicitor of Kenton, Ohio, concerning certain disputed points in connection with the valuation which were adjusted by agreement as set forth in the respective letters.

From the final summary sheet, which has been made a part of Engineer Foster's report, you will note that Engineer Foster has found the grand total reproduction cost new value of this property including all physical property, proper overheads and working capital and supplies as of August 15, 1929, to be the sum of $228,665.44 and the present or depreciated value to be $188,902.37. The grand total reproduction cost new claimed by the company as of August 1, 1929 is $340,543.00 and the present or depreciated value is $314,955.00.

You will further note that the Commission's valuation was made as of August 15, 1929, while that of the Company was made as of August 1, 1929, and it is not believed that net additions have been made to this property in any amount worthy of consideration during the fifteen day period represented by the difference between the date of the Company's valuation and the date of the Commission's valuation.

It will also be noted that the reproduction cost new value as determined by the Commission's Engineers is $111,877.56 less that that claimed by the Company and that the present or depreciated value as found by the Commission's Engineers is $126,052.63 less than the Company's claimed value. [fols. 259-263b] Considering the above facts and conditions, I would therefore recommend that the present value as shown by the Final Summary of Accounts attached to Engineer Foster's report, viz $188,902.37 be used as the total value of the property of The West Ohio Gas Company within the Kenton District used and useful in the service of the public as of August 15, 1929 in connection with Formal Proceeding No. 5666.

Yours very truly, (Signed) William Roger Dwyer,
Chief Engineer.

WRD:HH.

ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC LIGHT COMPANIES CLASS A, B and C

Commission Exhibit #1
of March 8, 1933

# ANNUAL REPORT

OF

WEST OHIO GAS CO.

LIMA, OHIO - Kenton District

TO

# The Public Utilities Commission of Ohio

For the Year Ending December 31,
1928

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1st

# INSTRUCTIONS

This form of annual report must be filled out and returned to the office of THE PUBLIC UTILITIES COMMISSION OF OHIO, Columbus, Ohio, by March 1st next.

Heretofore, it has been customary to print on the left hand pages instructions for answering questions covered by the opposite page of the report; but the Commission is of the opinion that this is not necessary, as returns often indicate that instructions have not been read or at least have not been followed, and they are therefore omitted from this form. The respondent, however, is urged to ask for instructions should there be any item in the report that is not fully understood and upon such request any information asked for will be furnished promptly.

This report form calls for Artificial Gas, Natural Gas and Electric Light operations, and any company furnishing more than one of these classes of service will report such information as is applicable for each class.

If it is necessary or desirable to insert additional statements, typewritten or other, in this report, care should be taken that they be legibly made on paper of a durable sort and, as a rule of a size not exceeding that of a page. Inserted sheets should be securely attached, preferably at inner margin.

All entries should be made in a permanent black ink, except those of a contrary or unusual character (like deficits for example), which should be made in a permanent red ink.

Each respondent should make its annual report to this Commission in duplicate, retaining one copy in its files for reference in case correspondence with regard to such report becomes necessary. For this reason two copies of the accompanying form are sent to each company concerned.

The word "respondent," whenever used in this report, means the company in whose behalf the report is made.

Attention is called to the following sections of the General Code of Ohio:

Section 614-2. Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation wherever organized or incorporated:

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating, or power purposes to consumers within this state, is a natural gas company;

Section 614-48. Every public utility shall file with the Commission, at such times and in such form as it may prescribe, an annual report, duly verified, covering the yearly period fixed by the Commission. The Commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form therefor. If any such report is defective or erroneous, the Commission may order the same to be amended within a prescribed time. Such annual reports shall be preserved in the office of the Commission. The Commission may at any time, require specific answers to questions upon which it may desire information.

Section 614-65. Whoever being an officer, agent or employe in an official capacity, of a public utility or railroad defined in this act, knowingly violates any provisions of this act, or wilfully fails, omits, or neglects to obey, observe or comply with any lawful order or direction of the Commission made with respect to any public utility or railroad shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than two years, or both, and each day's continuance of such failure, omission or neglect shall constitute a separate offense.

**THE INFORMATION CALLED FOR BY EACH PAGE OF THIS REPORT, UNLESS OTHERWISE INDICATED, IS TO BE REPORTED FOR THE ENTIRE COMPANY AND NOT FOR THE STATE OF OHIO ONLY**

**DO NOT FAIL TO MAKE RETURNS OF INTRASTATE GROSS EARNINGS ON PAGE 50**

# ANNUAL REPORT

OF

West Ohio Gas Co.

Lima, Ohio

TO

# The Public Utilities Commission of Ohio

For the Year Ending December 31,
1938

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1st

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## HISTORY

1. Exact name of company making this report. West Ohio Gas Company

2. Date of organization. Oct. 24, 1924.

3. Under the laws of what Government, State or Territory organized? If more than one name all. Give reference to each statute and amendments thereof.

State of Ohio

4. If a consolidated or merger company name all constituent and all merged companies. Give reference to charters or general laws governing each, and all amendments of same.

The properties of the following companies were purchased by the respondent in Dec. 1924.

The Lima Natural Gas Company — The Lima Gas Light Company

The Wapakoneta Natural Gas Company — The St. Marys Gas Company

The Celina Gas Company

5. Date and authority for each consolidation and each merger.

On authority of orders #3329 & #3330 issued by the Public Utilities Commission of Ohio dated Nov. 26, 1924

6. State whether respondent is a corporation, a joint stock association, a firm or partnership, or an individual.

Corporation

7. If a reorganized company, give name of original corporation, refer to laws under which it was organized and the occasion for the reorganization.

8. State whether or not, the respondent during the year conducted any part of its business under a name, or names, other than that shown, in response to inquiry No. 1, above. If so, give full particulars.

No

9. Where is the plant or plants located? Lima, Cridersville, Wapakoneta, Celina, St. Marys, and Kenton, Ohio

10. Name below all classes of public service furnished by the respondent:

Production and distribution of gas for domestic, commercial and industrial use in the above mentioned districts.

## DIRECTORS.

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| NAME. | POST-OFFICE ADDRESS. | DATE OF EXPIRATION OF TERM. |
|---|---|---|
| Samuel Insull | 122 So. Michigan Ave. Chicago, Illinois | One year from April 16, 1928 or until successor is elected. |
| Samuel Insull, Jr. | " | " |
| B. E. Mulholland | Ft. Wayne, Indiana | " |
| E. R. Curtin | Lima, Ohio | " |
| E. R. Curtin Jr | " | " |
| H. O. Bentley | " | " |
| F. L. Pringle | " | " |

## PRINCIPAL OFFICERS.

| TITLE | NAME | OFFICIAL ADDRESS |
|---|---|---|
| Chairman of the Board, | Samuel Insull | Chicago, Illinois |
| President, | E. R. Curtin | Lima, Ohio |
| First Vice-President, | Samuel Insull, Jr. | Chicago, Ill. |
| Second Vice-President, | | |
| Third Vice-President, | | |
| Secretary, | B. P. Sharon | Chicago, Ill. |
| Treasurer, | J. F. Mitchell | " |
| General Solicitor, | | |
| Attorney, or General Counsel, | H. O. Bentley | Lima, Ohio |
| Comptroller, | W. A. Dewes | Chicago, Ill. |
| Assistant Comptroller, | | |
| General Auditor, | | |
| Assistant General Auditor, | | |
| General Manager, | E. R. Curtin | Lima, Ohio. |
| Chief Engineer, | | |
| Superintendent, | | |
| Managing Agent for the Company in Ohio, | | |

Location of principal office, at Lima, County of Allen
and State of Ohio

Officer to whom correspondence concerning this report should be addressed:

| NAME. | TITLE. | ADDRESS. |
|---|---|---|
| E. R. Curtin | President | 712 W. Market St. Lima Ohio |

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## FACTS PERTAINING TO CONTROL OF RESPONDENT.

1. Date of last meeting of stockholders for election of directors: Apr. 16, 1928.
2. Date of last closing of stock books before end of year for which this report is made: Books do not close.
3. Total number of stockholders of record at the date required in answer to Question 2:
4. Has each share of stock one vote? Each share of Common Stock has one vote.
   If otherwise, explain voting rights.
5. Has any issue of securities contingent voting rights? Yes.
   If so, explain character of such rights: Preferred stock - 10 entitled to vote in event of default of 4 quarterly dividends
6. Has any issue of securities special privileges in the election of directors?
   If so, explain character of such privileges: Holders of Common Stock elect directors
7. Did any individual, association, corporation or corporations, control the respondent at close of year?

   If control was so held, state: Yes

   (a) The form of control, whether sole or joint: Sole

   (b) The name of the controlling corporation or corporations:

   Midland Utilities Company

   (c) The manner in which control was established:

   Stock Control

   (d) The extent of control: Owns all Common Stock except Directors' qualifying shares.

   (e) Whether control was direct or indirect:

   Direct

   (f) The name of the intermediary through which control, if indirect, was established.

8. Did any individual, association, or corporation, as trustee, control, the respondent at close of year?
   If control was so held, state: No

   (a) The name of the trustee:

   (b) The name of the beneficiary or beneficiaries for whose the trust was maintained.



CORPORATIONS CONTROLLED BY RESPONDENT

## CORPORATIONS CONTROLLED BY RESPONDENT

| NAME. | CONTROL. | | | | | |
|---|---|---|---|---|---|---|
| | SOLE OR JOINT. | HOW ESTABLISHED. | EXTENT. | DIRECT OR INDIRECT | IF INDIRECT, NAME OF INTERMEDIARY THROUGH WHICH CONTROL IS ESTABLISHED. | OTHER PARTIES TO AGREEMENT FOR JOINT CONTROL. |
| **ACTIVE CORPORATIONS:** | | None | | | | |
| **INACTIVE CORPORATIONS:** | | None | | | | |

## 6 SPECIAL TRAFFIC AGREEMENTS AND ARRANGEMENTS WITHIN THE STATE OF OHIO.

Give a list showing every agreement, arrangement, or understanding in force at any time during the year, through which agreement, arrangement, or understanding the respondent became obligated or privileged to receive from, or supply to, other corporations or persons, gas, electric energy or property, or to receive or render any service of any class which respondent is obligable or privileged to receive or render, the terms of which agreement differ in any regard whatever from those upon which any person is of common right entitled or bound to supply to, or to receive from, the respondent, gas, electric energy or property, or any service of any kind which respondent is obligable to receive or render. Show for each agreement: (1) the names and addresses of the parties thereto, (2) the date when it became effective, (3) the date when according to its terms it will expire, (4) the consideration upon which it is based, and (5) the amount of business done under it during the year. If there was no such agreement, state that fact.

None

## SHOW ARTIFICIAL GAS CUSTOMERS ON THIS PAGE

The respondent will show on this page the names of cities or villages in which it supplies artifical gas, with number of customers in each.

If any public utility product other than that designated by pages 6, 7 and 8, is supplied, name such product on this page, giving names of cities or villages supplied, with number of customers in each.

| CITY OR TOWN. | NUMBER OF CUSTOMERS. | CITY OR TOWN | NUMBER OF CUSTOMERS. |
|---|---|---|---|
| | | BROUGHT FORWARD. | |
| | | | |
| Lima, Ohio | 10,045 | | |
| FORWARD. | | TOTAL. | 10,045 |

8 SHOW NATURAL GAS CUSTOMERS ON THIS PAGE.

The respondent will show on this page the names of cities or villages in which it supplies natural gas, with number of customers in each.
If consumers are supplied outside of cities and villages in rural territory, give name of township with number of customers.

| CITY OR TOWN. | NUMBER OF CUSTOMERS. | CITY OR TOWN. | NUMBER OF CUSTOMERS. |
|---|---|---|---|
| | | BROUGHT FORWARD. | |
| Cedarville, Ohio | 1220 | | |
| Wapakoneta, Ohio | 1456 | | |
| St. Marys, Ohio | 1355 | | |
| Celina, Ohio | 1007 | | |
| Kenton, Ohio. | 1940 | | |
| FORWARD | | TOTAL | 5880 |

273 + 274

10 GENERAL BALANCE SHEET

ASSET ACCOUNTS

| ACCOUNT. | ITEM. | TOTAL. |
|---|---|---|
| I. FIXED CAPITAL ACCOUNTS: | | |
| Fixed Capital—Pages 13, 16, 18 | 3519523 32 | 3519523 32 |
| Cost of Fixed Capital purchased | | |
| Construction work in progress | | |
| II. INVESTMENT ACCOUNTS: | | |
| Investment Securities—Page 19 | 5000 | 5000 |
| Property Used in Other Public Services—Page 19 | | |
| Advances to Affiliated Companies for Construction, Equipment, or Additions and Betterments—Page 19 | | |
| Other Investments—Page 19 | | |
| III. REACQUIRED SECURITIES ACCOUNTS: | | |
| Reacquired Capital Stock | 14300 00 | 14300 00 |
| Reacquired Bonds | | |
| IV. FUND ACCOUNTS: | | |
| Sinking Fund Assets—Page 20 | | |
| Depreciation Fund Assets—Page 20 | | |
| Insurance and Other Reserve Fund Assets—Page 20 | | |
| V. SPECIAL DEPOSIT ACCOUNTS: | | |
| Interest Special Deposits—Page 21 | | |
| Dividend Special Deposits—Page 21 | | |
| Other Special Deposits—Page 21 | 200 00 | 200 00 |
| VI. CURRENT ASSET ACCOUNTS: | | |
| Cash | 24336 08 | 24336 08 |
| Notes Receivable—Page 21 | 2036 00 | 2036 00 |
| Accounts Receivable from Consumers | 44 500 75 | 44 500 75 |
| Accounts Receivable from Affiliated Companies—Page 21 | 4803 | 4803 |
| Other Accounts Receivable | 29 103 46 | 29 103 46 |
| Matured Interest and Rents Receivable | | |
| Materials and Supplies | 43 981 07 | 43 981 07 |
| Subscriptions to Capital Stock | | |
| Other Current Assets | 25 000 00 | 25 000 00 |
| VII. ACCRUED ASSET ACCOUNT: | | |
| Unmatured Interest and Rents Receivable | | |
| VIII. PREPAID ACCOUNTS: | | |
| Prepaid Insurance | 1063 32 | 1063 32 |
| Prepaid Interest | | |
| Prepaid Taxes | | |
| Other Prepaid Accounts | | |
| IX. DEFERRED CHARGE ACCOUNTS: | | |
| Discount on Capital Stock | 90 847 60 | 90 847 60 |
| Unamortized Debt Discount and Expense | 101 44008 | 101 44008 |
| Property Abandonment—Page 22 | | |
| Extraordinary Casualties | | |
| Non-Productive Well Drilling Expense | | |
| Preliminary Survey and Investigation Charges | | |
| Other Deferred Charges | 26 692 18 | 26 692 18 |
| Grand Total | 3923 129 89 | 3923 129 89 |

## LIABILITY ACCOUNTS

| ACCOUNT. | ITEM. | TOTAL. |
|---|---|---|
| **I. CORPORATE CAPITAL LIABILITY ACCOUNTS:** | | |
| Capital Stock—Page 23 | 2 376 381 30 | 2 376 381 30 |
| Installments Paid on Capital Stock Subscriptions | | |
| Stock Liability for Conversion of Securities | | |
| Premium on Capital Stock | | |
| **II. NON-CORPORATE PROPRIETORSHIP ACCOUNTS:** | | |
| Sole Proprietorship | | |
| Partnership | | |
| **III. FUNDED DEBT ACCOUNTS—Page 25** | | |
| Bonds | 1 000 000 00 | 1 000 000 00 |
| Real Estate Mortgages | | |
| Advances from Affiliated Companies for Construction Equipment, or Additions and Betterments | | |
| Other Funded Debt | | |
| **IV. CURRENT LIABILITY ACCOUNTS:** | | |
| Receiver's Certificates | | |
| Judgments | | |
| Workmen's Compensation | | |
| Notes Payable—Page 25 | 100 000 00 | 100 000 00 |
| Consumer's Deposits | 43 079 11 | 43 079 11 |
| Accounts Payable to Affiliated Companies—Page 25 | 3 386 50 | 3 386 50 |
| Other Accounts Payable | 47 443 53 | 47 443 53 |
| Matured Funded Debt—Page 25 | | |
| Matured Interest on Funded Debt | | |
| Matured Interest on Unfunded Debt | | |
| Dividends Payable | 30 000 00 | 30 000 00 |
| Service Billed in Advance | 640 11 | 640 11 |
| Capital Stock Subscribed | | |
| Other Current Liabilities | | |
| Purchase Contracts | 25 000 00 | 25 000 00 |
| **V. ACCRUED LIABILITY ACCOUNTS:** | | |
| Unmatured Interest Accrued on Funded Debt | 5 000 00 | 5 000 00 |
| Unmatured Interest Accrued on Unfunded Debt | 312 50 | 312 50 |
| Taxes Accrued | 46 582 37 | 46 582 37 |
| Other Accrued Liabilities | | |
| **VI. DEFERRED CREDIT ACCOUNTS:** | | |
| Unamortized Premium on Debt | | |
| Other Deferred Credits | | |
| Public Improvement Assessments | 3 001 73 | 3 001 73 |
| **VII. RESERVE ACCOUNTS:** | | |
| Insurance Reserve—Page 26 | | |
| Injuries and Damages Reserve—Page 26 | 1 510 43 | 1 510 43 |
| Uncollectible Consumers' Accounts Reserve—Page 26 | 4 317 01 | 4 317 01 |
| Depreciation of Structures and Equipment Reserve—Page 25 | 136 224 50 | 136 224 50 |
| Amortization of Other Capital Reserve—Page 26 Insurance Fund | 52 395 54 | 52 395 54 |
| Other Reserves—Page 26 | | |
| Street Main Contributions | 200 00 | 200 00 |
| **VIII. APPROPRIATED SURPLUS ACCOUNTS:** | | |
| Surplus Invested in Fixed Capital | | |
| Funded Debt Retired through Surplus | | |
| Surplus Reserved for Sinking Funds | | |
| Other Surplus Reserves | | |
| **IX. UNAPPROPRIATED SURPLUS ACCOUNT:** | | |
| Corporate Surplus Unappropriated* | 47 455 26 | 47 455 26 |
| Grand Total | 3 923 129 89 | 3 923 129 89 |

*Insert "Debit" or "Credit" as may be appropriate, showing the amount of debit in red.



FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS

## FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS

| ACCOUNT. | Balance at beginning of year | Charges for Capital added during year. | Credits made to sub-account during year. | Balance at close of year. |
|---|---|---|---|---|
| INTANGIBLE FIXED CAPITAL: | | | | |
| 1. Organization | | | | |
| 2. Franchises | | | | |
| 3. Miscellaneous intangible capital | | | | |
| TANGIBLE FIXED CAPITAL: | | | | |
| 4. Land: | | | | |
| (a) Land occupied by gas works | 4 834 37 | | | 4 834 37 |
| (b) Land occupied by outside holder stations | | | | |
| (c) Rights of way | | | | |
| (d) Water rights | | | | |
| (e) General office land | | | | |
| (f) Miscellaneous land devoted to gas operations | | | | |
| 5. Structures: | | | | |
| (a) Works and station structures | 38 282 56 | | | 38 282 56 |
| (b) Holders | | | | |
| (c) General office structures | | | | |
| (d) Miscellaneous structures devoted to gas operations | 22 330 21 | | | 22 330 21 |
| 6. Boiler plant equipment | 1 743 80 | | | 1 743 80 |
| 7. Steam engines | | | | |
| 8. Internal combustion engines | | | | |
| 9. Accessory power equipment | | | | |
| 10. Benches and retorts | | | | |
| 11. Water gas sets | 5 958 00 | | | 5 958 00 |
| 12. Purification apparatus | | | | |
| 13. Accessory works equipment | 2 887 42 | | | 2 887 42 |
| 14. Mains | | | | |
| 15. Services | | | | |
| 16. Consumers' meters | | | | |
| 17. Consumers' Meter installation | | | | |
| 18. Street lighting equipment | | | | |
| 19. Gas appliances | | | | |

## FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS—(Continued)

| ACCOUNT | Balance at beginning of year | Charges for capital added during year | Credits made to sub-account during year | Balance at close of year |
|---|---|---|---|---|
| 20. General equipment: | | | | |
| (a) General office equipment | | | | |
| (b) Shop equipment | | | | |
| (c) Stores equipment | | | | |
| (d) Transportation equipment | | | | |
| (e) Telephone, telegraph and wireless system | | | | |
| (f) Laboratory equipment | | | | |
| (g) Miscellaneous equipment | | | | |
| 21. Miscellaneous tangible capital | | | | |
| 22. Engineering and superintendence during construction | | | | |
| 23. Law expenditures during construction | | | | |
| 24. Injuries and damages during construction | | | | |
| 25. Taxes during construction | | | | |
| 26. Interest during construction | | | | |
| 27. Miscellaneous construction expenditures | | | | |
| 28. Fixed capital not classified by prescribed accounts | | | | |
| 29. Cost of plant and equipment purchased | | | | |
| 30. Unfinished Plant Investment (construction work in progress) | | | | |
| Total | 76 03636 | | 0 | 76 03636 |

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## FIXED CAPITAL INSTALLED PRIOR TO ~~JANUARY 1, 1921~~ December 1, 1924

Give particulars of the credits made during the year in the accounts of the respondent representing its plant and equipment installed in service prior to January 1, 1921.

If the respondent's classification of fixed capital accounts in conformity with the principles embodied in the account for Fixed Capital Installed since December 31, 1920, became effective at an earlier date, the dates in the headings of the present schedule and the following schedule may be correspondingly modified.

Names of subaccounts shown in column (a) should be those carried on the respondent's books of account immediately prior to the adoption of the Uniform System of Accounts for Natural Gas Companies or its equivalent.

If the respondent's accounts representing plant and equipment installed prior to January 1, 1921, have been reclassified in accordance with the rules governing accounts for fixed capital installed since December 31, 1920, there may be shown in column (a) the names of accounts now carried on respondent's books representing such plant and equipment instead of those carried prior to the adoption of the Uniform System of Accounts for Natural Gas Companies.

In connection with the credits called for in column (c) of this schedule and column (d) of schedule on page 13, see paragraph 2, page 18, of the Uniform System of Accounts for Natural Gas Companies.

| NAMES OF ACCOUNTS KEPT PRIOR TO JANUARY 1, 1921. (a) | Balance at beginning of year. (b) | Credits made to sub-accounts during year. (c) | Balance at close of year. (d) |
|---|---|---|---|
| Plant and Property purchased | 3,116,801.74 | 8,533.46 | 3,108,268.28 |
| Total | 3,116,801.74 | 8,533.46 | 3,108,268.28 |

December 1, 1924

## FIXED CAPITAL INSTALLED SINCE ~~DECEMBER 31, 1923~~ NATURAL GAS

| ACCOUNT. (a) | Balance at beginning of year. (b) | Charges for capital added during year. (c) | Credits made to sub accounts during year. (d) | Balance at close of year. (e) |
|---|---|---|---|---|
| I. UNDISTRIBUTED FIXED CAPITAL ACCOUNTS: | | | | |
| 200 Organization | 28812 73 | | | 28812 73 |
| 201 Franchises | | | | |
| 202 Patent Rights and Licenses | | | | |
| 203 Other Undistributed Fixed Capital | | | | |
| II. PRODUCTION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 204 Land | | | | |
| 205 Leaseholds | | | | |
| 206 Rights of Way | | | | |
| 207 Natural Gas Rights | | | | |
| 208 Gas Well Structures | | | | |
| 209 Field Measuring Station Structures | | | | |
| 210 Other Production System Structures | | | | |
| 211 Gas Well Construction | | | | |
| 212 Gas Well Equipment | | | | |
| 213 Field Line Construction | | | | |
| 214 Field Line Equipment | | | | |
| 215 Field Measuring Station Equipment | | | | |
| 216 Drilling and Cleaning Equipment | | | | |
| 217 Other Production System Equipment | | | | |
| III. TRANSMISSION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 218 Land | 515 26 | | | 515 26 |
| 219 Leaseholds | | | | |
| 220 Rights of Way | | | | |
| 221 Compressing Station Structures | | | | |
| 222 Transmission System Measuring Station Structures | | | | |
| 223 Other Transmission System Structures | | | | |
| 224 Compressing Station Equipment | | | | |
| 225 Transmission System Measuring Station Equipment | | | | |
| 226 Transmission Line Equipment | | | | |
| 227 Other Transmission System Equipment | | | | |
| IV. DISTRIBUTION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 228 Land | | | | |
| 229 Leaseholds | | | | |
| 230 Rights of Way | | | | |
| 231 District Regulator Structures | 827 66 | | | 827 66 |
| 232 Other Distribution System Structures | | | | |
| 233 Gas Receivers and District Regulators | 2 415 12 | | | 2 415 12 |
| 234 Distribution Line Equipment | 148 750 11 | 12 072 61 | | 160 822 72 |
| 235 Service Line Equipment | 34 241 82 | 2 291 90 | | 36 533 72 |
| 236 Meters | 14 451 84 | 1 875 74 | | 16 327 58 |
| 237 Meter Installation | 4 827 17 | 1 682 55 | | 6 009 72 |
| 238 House Regulators | | | | |
| 239 Other Distribution System Equipment | | | | |

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794

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## FIXED CAPITAL INSTALLED SINCE DECEMBER 31, 1920—NATURAL GAS

| ACCOUNT. (a) | Balance at beginning of year. (b) | Charges for capital added during year. (c) | Credits made to sub-account during year. (d) | Balance at close of year. (e) |
|---|---|---|---|---|
| **V. UTILIZATION SYSTEM PROPERTY ACCOUNTS:** | | | | |
| 240 Commercial Lighting System | | | | |
| 241 Municipal Street Lighting System | | | | |
| 242 Private Street Lighting System | | | | |
| 243 Other Utilization Equipment | | | | |
| **VI. GENERAL PROPERTY ACCOUNTS:** | | | | |
| 244 General Office Land | 50 00 00 | | | 50 00 00 |
| 245 Other General Land | | | | |
| 246 Leaseholds | | | | |
| 247 General Office Structures | | 639 68 | | 639 68 |
| 248 Other General Structures | | | | |
| 249 General Office Equipment | 7 510 32 | 961 35 | | 8 471 67 |
| 250 General Store Equipment | | | | |
| 251 General Shop Equipment | 595 59 | 539 06 | | 1 134 65 |
| 252 General Stable Equipment | | | | |
| 253 General Garage Equipment | 8 267 19 | 4 555 53 | | 12 822 72 |
| 254 General Laboratory Equipment | | | | |
| 255 General Telephone and Telegraph System | | | | |
| 256 General Tools and Implements | | | | |
| 257 Other General Equipment | 729 68 | 346 39 | | 1 076 07 |
| **VII. UNDISTRIBUTED CONSTRUCTION EXPENDITURE ACCOUNTS:** | | | | |
| 258 Engineering and Superintendence during construction | | | | |
| 259 General Officers' and Clerks' salaries during construction | | | | |
| 260 General Officers' and Clerks' expenses during construction | | | | |
| 261 Office Supplies and Expenses during construction | | | | |
| 262 Law Expenditures during construction | | | | |
| 263 Injuries and Damages during construction | | | | |
| 264 Insurance during construction | | | | |
| 265 Taxes during construction | | | | |
| 266 Interest during construction | 950 02 | | | 950 02 |
| 267 Other Expenditures during construction | | | | |
| Construction Work in Progress | 71 00 | 7 788 36 | | 7 859 36 |
| Total | 302 465 51 | 32 763 17 | | 335 218 68 |
| **SUMMARY OF FIXED CAPITAL:** | | | | |
| Installed Prior to ~~January 1, 1921~~ 12-1-24 | 3 116 801 74 | | 8 533 46 | 3 108 268 28 |
| Installed Since ~~December 31, 1920~~ 12-1-24 | 302 465 51 | 32 763 17 | | 335 218 68 |
| Total | 3 419 267 26 | 32 763 17 | 8 533 46 | 3 443 486 96 |

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## INVESTMENT SECURITIES

| NAME OF ISSUING COMPANY AND DESCRIPTION OF SECURITY HELD. | PLEDGED. Par value. | PLEDGED. Book value. | UNPLEDGED. Par value. | UNPLEDGED. Book value. | INCOME DERIVED. Rate. | INCOME DERIVED. Amount of dividends. | INCOME DERIVED. Amount of interest. | Amount of interest, if control exists. |
|---|---|---|---|---|---|---|---|---|
| Investment of Affiliated Companies: | | | None | | | | | |
| Investment of Non-Affiliated Companies: | | | None | | | | | |
| Other Investments: One share no par stock of The Lewis Gasoline Co. | | 50 00 | | | | 13 00 | | |
| Total | | 50 00 | | | | 13 00 | | |

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## FUND ACCOUNTS

| NAME OF FUND. | Par value. | Book value. | Balance in Fund at beginning of year. | Additions to Fund During Year. | Withdrawals from Fund During Year. | Balance in Fund at close of year. |
|---|---|---|---|---|---|---|

## FUND ACCOUNTS

| NAME OF FUND. | Par value. | Book value. | Balance in Fund at beginning of year. | Additions to Fund during year. | Withdrawals from Fund during year. | Balance in Fund at close of year. |
|---|---|---|---|---|---|---|
| Sinking Fund Assets. | | None | | | | |
| Depreciation Fund Assets: | | None | | | | |
| Insurance and Other Reserve Fund Assets: | | None | | | | |
| Total | | | | | | |

## CASH AND SPECIAL DEPOSITS



| Name of depositary. | Purpose of Deposit | Amount at close of year |
|---|---|---|
| Lima Trust Co. Lima, Ohio | Operations | 21,378.24 |
| Peoples National Bank-Napoleon, O. | " | 535.04 |
| American State Bank-St. Marys, O. | " | 366.27 |
| The Commercial Bank Co. Celina, O. | " | 420.50 |
| The Commercial Bank, Kenton, O. | " | 316.03 |
| Petty Cash Funds | " | 120.00 |
| Payroll Fund-Lima Trust Co.-Lima, O. | " | 200.00 |
| | Total | 24,536.08 |

## NOTES AND ACCOUNTS RECEIVABLE

| Bills Receivable. Name of debtor | Amount at close of year | *Miscellaneous Accounts Receivable. Name of debtor | Amount at close of year |
|---|---|---|---|
| Harry D. Hildreth | 200.00 | Acct. Rec.-Mercantile | 27,906.79 |
| Charles Wirtz | 1,836.00 | " " -Bro Consumers | 44,308.15 |
| | | " " -Sundry | 1,196.67 |
| Total | 2,036.00 | Total | 73,612.21 |

## ACCOUNTS RECEIVABLE FROM AFFILIATED COMPANIES

| Name of debtor. | Character of transaction | Amount at close of year |
|---|---|---|
| Northern Indiana Public Service Co. | Transfer of materials and supplies | 37.21 |
| Insurance Trustee | Adjustment of Insurance Premiums | 10.82 |
| | Total | 48.03 |

*Show principal items only. Minor items may be reported in one group.

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## PROPERTY ABANDONED

| Items. | Year of Abandonment | Balance in Account at beginning of year | Amount Charged to Account during year | Amount Credited to Account during year | Balance in Account at close of year |
|---|---|---|---|---|---|
| Motive | 1925 | 10,515.72 | | | |
| Transportation Equipment | " | 1,443.28 | — | 22,440.05 | — |
| General Equipment | " | 252.00 | | | |
| Maint. of Services | " | 11,228.04 | | | |
| Total | | 23,440.05 | | 23,440.05 | |

REMARKS

## CAPITAL STOCK.

| CLASS OF STOCK. | NUMBER OF SHARES AUTHORIZED. | PAR VALUE OF ONE SHARE. | TOTAL PAR VALUE AUTHORIZED* | TOTAL PAR VALUE OUTSTANDING. | TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION: IN TREASURY. | TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION: IN SINKING OR OTHER FUNDS. | TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION. | DIVIDENDS DECLARED DURING YEAR: Rate | DIVIDENDS DECLARED DURING YEAR: AMOUNT. |
|---|---|---|---|---|---|---|---|---|---|
| Common | 75,000 | No par | | 75,000 shares | | | | | 52,500.00 |
| Preferred-Class A | 3000 | $100 | $300,000.00 | $300,000.00 | | | $300,000 | | 21,000.00 |
| " " B | 4500 | $100 | 450,000.00 | 450,000.00 | | | 450,000 | | 31,500.00 |
| TOTAL | 82,500 | | | | | | | | 105,000.00 |

## FUNDED DEBT.

| DESIGNATION OF ISSUE OR OBLIGATION. | TERM: Date of Issue | TERM: Date Maturity | TOTAL PAR VALUE AUTHORIZED* | TOTAL PAR VALUE OUTSTANDING. | TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION: IN TREASURY. | TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION: IN SINKING OR OTHER FUNDS. | TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION | INTEREST: Rate | INTEREST: When Payable | INTEREST: AMOUNT ACCRUED DURING YEAR. | INTEREST: AMOUNT PAID DURING YEAR. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| First and Refunding 6% mortgage Bonds | 12/1/24 | 12/1/54 | 1,000,000 | 1,000,000 | None | | 1,000,000 | 6 | June 1st & Dec. 1st | 60,000 | 60,000 |
| TOTAL | | | 1,000,000 | 1,000,000 | | | 1,000,000 | | | 60,000 | 60,000 |

*Purpose for which issue was authorized.

Receipts Outstanding at the close of the year for installments received on subscriptions for stocks were as follows:

Common stock, $ ; Second preferred stock, $ ; First preferred stock, $ ; Debenture stock, $ ; All classes, $





9788-A32

## SECURITY FOR FUNDED DEBT.

| DESIGNATION OF BOND OR OBLIGATION | PROPERTY MORTGAGED AND SECURITIES PLEDGED. | | REMARKS. |
|---|---|---|---|
| | DESCRIPTION. | VALUE. | |
| 4 said 2nd Refunding mortgage Bonds | Entire Property | 3,519,523,32 | |

## SUNDRY CURRENT LIABILITIES

| NAME OF CREDITOR OR OBLIGATION. | CHARACTER OF TRANSACTIONS INVOLVED. | Credit balance at close of year. |
|---|---|---|
| | Notes Payable | |
| Midland Utilities Co. | Advance for Construction | 100 000 00 |
| | Total, | 100 000 00 |
| | Accounts Payable to Affiliated Companies | |
| Northern Ind. Pub. Service Co. | Services rendered | 735 57 |
| Insurance Trustees | Insurance Premium | 654 94 |
| Midland Stock Transfer Co. | Services rendered | 25 |
| " Utilities Co. of Indiana | Supplies furnished | 122 40 |
| " " " | Services rendered | 1 873 34 |
| | Total, | 3 386 50 |
| | Matured Funded Debt | |
| | Total, | |

## DEPRECIATION OF STRUCTURES AND EQUIPMENT RESERVE

| DEBIT ITEMS. | | CREDIT ITEMS. | |
|---|---|---|---|
| Retirements During the Year (X) | 34 157 12 | Balance at Beginning of Year | 113 849 52 |
| Other Debits: | 252 00 | Amount Reserved During the Year by Charges to Operating Expenses | 56 770 90 |
| (X) Includes property abandoned as shown on page 202 | | Other Credits: | 13 20 |
| Balance at Close of Year | 136 224 50 | | |
| Total, | 170 633 62 | Total, | 170 633 62 |

## BASIS FOR DEPRECIATION RESERVE.

Explain here in detail the basis upon which the charge to operating expenses on account of depreciation is founded and also the method by which the amount in question was derived. The amount here shown will be the same as that carried to "Depreciation of Structures and Equipment Reserve" on the General Balance Sheet.

Depreciation of General Property is in accordance with figure incorporated in an order of the Public Utilities Commission of Ohio in a recent rate case. Depreciation of Transportation Equipment is based on actual cost less salvage amortized over the life of the equipment.

## RESERVES

| DEBIT ITEMS | | CREDIT ITEMS | |
|---|---|---|---|
| **INSURANCE RESERVES** | | | |
| | | Balance at Beginning of Year | — |
| | | Amount Reserved During the Year by Charges to Operating Expenses | — |
| | | Other Credits: | |
| | | None | |
| Balance at Close of Year | | | |
| Total | | Total | — |
| **INJURIES AND DAMAGES RESERVE** | | | |
| | | Balance at Beginning of Year | 438 04 |
| Charges account of injuries and damages expense | 127 59 | Amount Reserved During the Year by Charges to Operating Expenses | 989 98 |
| | | Other Credits: | — |
| Balance at Close of Year | 1 510 43 | | |
| Total | 1 638 02 | Total | 1 638 02 |
| **UNCOLLECTIBLE CONSUMERS' ACCOUNTS RESERVE** | | | |
| | | Balance at Beginning of Year | 4 360 53 |
| 1927 Worthless Bills charged off | 3 628 57 | Amount Reserved During the Year by Charges to Operating Expenses | 4 317 01 |
| adjusting 1927 Reserve | 730 96 | Other Credits: | |
| Balance at Close of Year | 4 317 01 | | |
| Total | 8 677 54 | Total | 8 677 54 |
| **AMORTIZATION OF ~~OTHER PLANT~~ RESERVE** Transmission Line | | | |
| | | Balance at Beginning of Year | 40 687 54 |
| | | Amount Reserved During the Year by Charges to Operating Expenses | 11 798 00 |
| | | Other Credits: | — |
| Balance at Close of Year | | | |
| Total | | Total | 52 485 54 |
| **OTHER RESERVES** | | | |
| | | Balance at Beginning of Year | — |
| | | Amount Reserved During the Year by Charges to Operating Expenses | — |
| | | Other Credits: | |
| | | None | |
| Balance at Close of Year | | | |
| Total | | Total | |

## MEMORANDUM

Use this page for an explanation of any item contained in this report where sufficient space is not available.

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## CORPORATE SURPLUS UNAPPROPRIATED

| ITEM | DEBITS | CREDITS | REMARKS |
|---|---|---|---|
| CREDITS: | | | |
| Credit balance at beginning of year | | 43,382.94 | |
| Credit balance transferred from Income Account | | 17,861.50 | |
| Uncollectible Consumers' Accounts recovered | | | |
| Uncollectible Non-Operating Revenues recovered | | | |
| Other Additions to Surplus | | | |
| Miscellaneous Credits | | 2,480.96 | |
| DEBITS: | | | |
| Debit balance at beginning of year | | | |
| Debit balance transferred from Income Account | | | (X) Adjusting unbilled income at 12-31-28 |
| Surplus Appropriated for Sinking Funds | | | |
| Surplus Appropriated for Other Reserve Funds | | | |
| Surplus Appropriated for Dividends—Page 28 | | | |
| Surplus Appropriated for Investment in Fixed Capital | | | |
| Gifts to Affiliated Companies | | | |
| Expenses unprovided for elsewhere | | | |
| Amortization unprovided for elsewhere | | | |
| Other Appropriations of Surplus | | | |
| Other Deductions from Surplus (X) | 12,140.00 | | |
| Uncollectible Consumers' Accounts—Old Year | | | |
| Uncollectible Non-Operating Revenues—Old Year | | | |
| Miscellaneous Debits | 4,020.14 | | |
| Balance carried forward to Balance Sheet | 47,685.26 | | |
| Total | 63,845.40 | 63,845.40 | |

## DIVIDENDS DECLARED DURING THE YEAR

| NAME OF SECURITY ON WHICH DIVIDEND WAS DECLARED | Rate Per Cent. Regular. | Rate Per Cent. Extra. | Par value of amount on which dividend was declared. | *Amount of dividend. | Date Declared. | Date Payable. |
|---|---|---|---|---|---|---|
| Dividends Charged to Income: | | | | | | |
| Class 'A' Preferred - 1st Quarterly | 1¾ | | 300,000.00 | 5,250.00 | 1-25-28 | 2-1-28 |
| " - 2nd " | 1¾ | | 300,000.00 | 5,250.00 | 4-16-28 | 5-1-28 |
| " - 3rd " | " | | 300,000.00 | 5,250.00 | 7-20-28 | 8-1-28 |
| " - 4th " | " | | 300,000.00 | 5,250.00 | 10-18-28 | 11-1-28 |
| Class 'B' Preferred - | 3½ | | 450,000.00 | 15,750.00 | 7-20-28 | 8-1-28 |
| " | " | | 450,000.00 | 15,750.00 | 11-23-28 | 12-1-28 |
| Common Stock, 10% par shares | | | | 7,500.00 | 9-21-28 | 9-27-28 |
| " - 20% " " | | | | 15,000.00 | 12-11-28 | 12-22-28 |
| " - 40% " " | | | | 30,000.00 | 12-11-28 | 1-31-29 |
| Total Charged to Income | | | | 105,000.00 | | |
| Dividends Charged to Surplus: | | | | | | |
| Total Charged to Surplus: | | | | 105,000.00 | | |
| Grand Total | | | | | | |

*Total of this column should correspond with like item on page 31.

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## INCOME ACCOUNT
(Entire Company)



| ACCOUNT. | AMOUNT | REMARKS |
|---|---|---|
| I. OPERATING INCOME: | | |
| 1. Operating Revenues—Page 30 | 739,854.77 | |
| 2. Operating Expenses—Pages 32-36-40 | 480,824.98 | |
| 3. *Net Operating Revenue | 259,029.79 | |
| II. NON-OPERATING REVENUES AND EXPENSES: | | |
| 4. Revenues—Page 41 | 54,969.11 | |
| 5. Expenses—Page 41 | 54,675.90 | |
| 6. *Net Non-Operating Revenue | 293.21 | |
| 7. *Total Net Operating Income (Total Items 3 & 6) | 259,323.00 | |
| 8. Taxes Assignable to Operations—Page 43 | 58,198.72 | |
| 9. *Gross Income (Item 7 less Item 8) | 200,124.28 | |
| III. GROSS INCOME DEDUCTIONS. | | |
| 10. Rent for Lease of Public Utility Properties—Page 44 | | |
| 11. Joint Facility Rent | | |
| 12. Other Rent Deductions | | |
| 13. Interest Accrued on Funded Debt—Page 23 | 60,000.00 | |
| 14. Interest Accrued on Unfunded Debt | 12,797.06 | |
| 15. Guaranties of Periodic Payments | | |
| 16. Loss on Operations of Others | | |
| 17. Other Contractual Deductions from Income | | |
| 18. Amortization of Debt Discount and Expense | 3,907.74 | |
| 19. Amortization of Interests in Landed Capital | | |
| 20. Other Deductions from Income | 665.98 | |
| 21. Amortization of Premium on Debt | | |
| 22. Total Deductions from Gross Income | 77,370.78 | |
| 23. *Net Income (Item 9 less Item 22) | 122,753.50 | |
| IV. NET INCOME APPROPRIATIONS | | |
| 24. Net Income Appropriated for Sinking Funds—Page 45 | | |
| 25. Net Income Appropriated for Depreciation Reserve Fund—Page 45 | | |
| 26. Net Income Appropriated for Other Reserve Funds—Page 45 | | |
| 27. Net Income Appropriated for Dividends—Page 28 | 104,902.00 | |
| 28. Net Income Appropriated for Investment to Fixed Capital—Page 45 | | |
| 29. Total Appropriations of Income | 104,902.00 | |
| 30. *Balance transferred to surplus—Page 28 (Item 23 less Item 29) | 17,851.50 | |

31. The operating revenues and expenses above stated relate to the period inclusive _____ 19__ and ending _____ 19__

*If deficit, in Red.

30 ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—OPERATING REVENUES

| ACCOUNT. | CLASS. | | | AMOUNT. | REMARKS. |
|---|---|---|---|---|---|
| ARTIFICIAL GAS REVENUES: | | | | | |
| 1. Metered Domestic and Commercial Sales | A | B | C | 481 581 00 | |
| 2. Metered Industrial Sales | A | B | C | 22 272 14 | |
| 3. Metered Sales for Municipal Street Lighting | A | B | C | | |
| 4. Metered Sales for Other Municipal Purposes | A | B | C | 2 447 81 | |
| 5. Metered Sales to Other Gas Utilities | A | B | C | | |
| 6. Flat-Rate Sales to General Consumers | A | B | C | | |
| 7. Flat-Rate Sales for Municipal Street Lighting | A | B | C | | |
| 8. Flat-Rate Sales for Other Municipal Purposes | A | B | C | | |
| 9. Prepaid Gas Sales | A | B | C | | |
| 10. Commissions on Others' Gas | A | B | C | | |
| 11. Consumers' Discounts Forfeited and Penalties Imposed | A | B | C | | |
| House Heating | | | | 4 304 13 | |
| Total Artificial Gas Revenues | | | | 511 105 08 | |
| NATURAL GAS REVENUES: | | | | | |
| 1. Metered Private Sales | | | C | | |
| 2. Metered Domestic and Commercial Sales | A | B | | 224 298 81 | |
| 3. Metered Industrial Sales | A | B | | 3 615 72 | |
| 4. Other Metered Private Sales | A | B | | | |
| 5. Metered Sales of Other Natural Gas Utilities | | | C | | |
| 6. Metered Sales to Affiliated Natural Gas Utilities | A | B | | | |
| 7. Metered Sales to Non-affiliated Natural Gas Utilities | A | B | | | |
| 8. Metered Public Sales | A | B | C | 707 98 | |
| 9. ~~Unmetered Private Sales~~ House Heating | | | C | 127 18 | |
| 10. Unmetered Domestic and Commercial Sales | A | B | | | |
| 11. Unmetered Industrial Sales | A | B | | | |
| 12. Unmetered Sales for Lighting Private Streets | A | B | | | |
| 13. Other Unmetered Private Sales | A | B | | | |
| 14. Unmetered Sales to Other Natural Gas Utilities | | | C | | |
| 15. Unmetered Sales to Affiliated Natural Gas Utilities | A | B | | | |
| 16. Unmetered Sales to Non-affiliated Natural Gas Utilities | A | B | | | |
| 17. Unmetered Public Sales | | | C | | |
| 18. Unmetered Sales for Municipal Street Lighting | A | B | | | |
| 19. Unmetered Sales for Other Municipal Uses | A | B | | | |
| 20. Consumers' Discounts Forfeited and Penalties Imposed | A | B | C | | |
| 21. Allowances to Consumers | A | B | C | | |
| Total Natural Gas Revenues | | | | 228 749 69 | |
| ELECTRIC REVENUES: | | | | | |
| 1. Municipal Light and Power Revenues | | | C | | |
| 2. Municipal Street Lighting—Arc | A | B | | | |
| 3. Municipal Street Lighting—Incandescent | A | B | | | |
| 4. Other Municipal Light and Power Revenues—Metered | A | B | | | |
| 5. Other Municipal Light and Power Revenues—Flat-Rate | A | B | | | |
| 6. Private Light and Power Revenues | | | C | | |
| 7. Residence Light and Power Revenues—Metered | A | B | | | |
| 8. Residence Light and Power Revenues—Flat-Rate | A | B | | | |
| 9. Commercial Light and Power Revenues—Metered | A | B | | | |
| 10. Commercial Light and Power Revenues—Flat-Rate | A | B | | | |
| 11. Miscellaneous Electric Revenues | | | C | | |
| 12. Sales to Other Public Utilities | A | B | | | |
| 13. Other Miscellaneous Electric Revenues | A | B | | | |
| Total Electric Revenues | | | | — | |
| Grand Total Operating Revenues | | | | 739 854 77 | |

## OPERATING EXPENSES — ARTIFICIAL GAS
(Entire Company)



| ACCOUNT. | AMOUNT. |
|---|---|
| **I. Production Expenses:** | |
| 1. Works Superintendence, | 2 282 90 |
| 2. Works Labor, | 1 804 75 |
| 3. ~~Boiler-Fuel~~ Holder Stock Adjustment | 15 30 |
| 4. ~~Water,~~ Duplicate Production Charge (CR) | 476 01 |
| 5. ~~Fuel-Under-Retorts,~~ Steam Expense Apportioned | 13 719 52 |
| 6. ~~Coal-Carbonized,~~ Generator Labor | 3 176 16 |
| 7. ~~Coal-Gas-Enrichers,~~ Purification Labor | 185 46 |
| 8. Generator Fuel, | 29 721 42 |
| 9. Water-Gas Oil, | 436 03 |
| 10. Purifying Supplies, | |
| 11. Miscellaneous Works Expense, | 1 265 25 |
| 12. Gas Storage, | 910 66 |
| 13. Gas from Other Sources, | |
| 14. Works and Station Structures — Maintenance, | 739 35 |
| 15. Power-Plant Equipment — Maintenance, | 300 93 |
| 16. Gas Apparatus — Maintenance, | 3 381 96 |
| 17. Works Tools — Maintenance, | 93 83 |
| Total Production Expenses, | 57 626 91 |
| **II. Transmission and Distribution Expenses:** Duplicate Distribution Charge (CR) | 172 99 |
| 18. Transmission Pumping, | 3 681 88 |
| 19. Distribution Superintendence, | 3 620 71 |
| 20. Distribution Supplies and Expenses, and Operating Labor | 2 971 34 |
| 21. Gas Meter and Installation Work, | 6 152 71 |
| 22. Work on Consumers' Premises, | 10 005 03 |
| 23. Gas Mains and Services — Maintenance, | 8 276 33 |
| 24. Gas Meters — Maintenance, | 7 343 81 |
| 25. Distribution Tools — Maintenance, and Buildings and Shop | 281 66 |
| 26. Gas Appliances — Maintenance, | 802 73 |
| Total Transmission and Distribution Expenses, | 42 983 21 |
| **III. Street and Park Lighting Expenses:** | |
| 27. Street Lamp Operation, | |
| 28. Street Lamps — Maintenance, | |
| Total Street and Park Lighting Expenses, | |
| **IV. Commercial Expenses:** | |
| 29. Commercial Administration, | 13 747 14 |
| 30. ~~Advertising,~~ Meter Reading | 4 099 34 |
| 31. Other Commercial Expenses, | 4 471 00 |
| Total Commercial Expenses, | 22 317 48 |
| IV-A Natural Gas Purchased | 93 764 46 |

32 OPERATING EXPENSES—ARTIFICIAL GAS—(Concluded.)
(Illinois Company)

| ACCOUNT. | AMOUNT. |
|---|---|
| V. NEW BUSINESS EXPENSES: | |
| 32. New business salaries | 214 19 |
| 33. New business supplies and expenses DEMONSTRATION | 1 434 91 |
| 34. Advertising supplies and expenses | 1 926 35 |
| 35. Canvassing and soliciting | 6446 10 |
| 36. Miscellaneous new business supplies and expenses | 570 41 |
| Total New Business Expenses | 10 648 94 |
| VI. GENERAL AND MISCELLANEOUS EXPENSES: | |
| 37. Salaries and expenses of general officers | 9747 98 |
| 38. Salaries and expenses of general office clerks | 7 368 23 |
| 39. General office supplies and expenses | 2724 88 |
| 40. General law expenses | 473 02 |
| 41. Miscellaneous general expenses | 13 187 94 |
| 42. Insurance | 3 197 44 |
| 43. Relief department and pensions AND EMPLOYEES W/WELFARE | 916 21 |
| 44. Gas franchise requirements INDIRECT CHARGE TO CONSTRUCTION (CR) | 1 868 12 |
| 45. Uncollectible Consumers' Accounts | 2 [illegible] 02 |
| 46. Residuals expense TANK TRUCK EXPENSE | 232 01 |
| 47. General amortization | |
| 48. Injuries to persons and property | 687 98 |
| 49. Stationery and printing | 417 28 |
| 50. Store expenses DELIVERY MISC. CHARGES (CR) | 954 51 |
| 51. Stable expenses REGULATORY COMMISSION EXPENSE | 476 05 |
| 52. Miscellaneous adjustments—Balance | 81 40 |
| 53. General structures—Maintenance | 285 45 |
| Total General and Miscellaneous Expenses | 39 950 26 |
| Recapitulation of Operating Expenses: | |
| I. Production | 57 526 91 |
| II. Transmission and Distribution | 42 983 21 |
| III. Street and Park Lighting NATURAL GAS PURCHASED | 93 764 46 |
| IV. Commercial | 22 247 48 |
| V. New Business | 10 648 94 |
| VI. General and Miscellaneous | 39 950 26 |
| | 247 121 26 |

| | ACCOUNT. | CLASS. | AMOUNT. |
|---|---|---|---|
| | A. PRODUCTION SYSTEM ACCOUNTS: | | |
| | Operating Labor | B C | |
| 350 | Superintendence | A | |
| 351 | Gas Well and Field Line Labor | A | |
| 352 | Field Measuring Station Labor | A | |
| 353 | Other Labor | A | |
| | Operating Supplies and Expenses | B C | |
| 354 | Superintendence Supplies and Expenses | A | |
| 355 | Gas Well and Field Line Supplies and Expenses | A | |
| 356 | Field Measuring Station Supplies and Expenses | A | |
| 357 | Production System Rent | A | |
| 358 | Other Supplies and Expenses | A | |
| 359 | Gas Well Royalties | A B C | |
| 360 | Rental on Unoperated Leases | A B C | |
| | Maintenance of Production System Structures | B C | |
| 361 | Maintenance of Gas Well Structures | A | |
| 362 | Maintenance of Other Production System Structures | A | |
| | Maintenance of Production System Equipment | C | |
| | Maintenance of Gas Well and Field Line Equipment | B | |
| 363 | Maintenance of Gas Well Equipment | A | |
| 364 | Maintenance of Field Line Equipment | A | |
| 365 | Abandoning Wells and Changing Field Lines | A | |
| | Maintenance of Other Production System Equipment | B | |
| 366 | Maintenance of Field Measuring Station Equipment | A | |
| 367 | Maintenance of Drilling and Cleaning Equipment | A | |
| 368 | Maintenance of Other Production Equipment | A | |
| | Total Production Expenses | | |
| | B. NATURAL GAS PRODUCED BY OTHERS: | | |
| 369 | Natural Gas Purchased for Resale | A B C | 99 64 69 |
| 370 | Purchased Gas Expense | A B C | |
| | Total Produced Expense | | |
| | C. TRANSMISSION SYSTEM ACCOUNTS: | | |
| | Operating Labor | B C | |
| 371 | Superintendence | A | |
| 372 | Compressing Station Labor | A | |
| 373 | Measuring Station Labor | A | |
| 374 | Transmission Line Labor | A | |
| 375 | Other Transmission System Labor | A | |
| | Operating Supplies and Expenses | B C | |
| 376 | Superintendence Supplies and Expenses | A | |
| 377 | Compressing Station Supplies and Expenses | A | 124 23 |
| 378 | Measuring Station Supplies and Expenses | A | |
| 379 | Transmission Line Supplies and Expenses | A | |
| 380 | Transmission System Rent | A | |
| 381 | Other Transmission System Supplies and Expenses | A | |
| | Maintenance of Transmission System Structures | B C | |
| 382 | Maintenance of Compressing Station Structures | A | |
| 383 | Maintenance of Other Transmission System Structures | A | |
| | Maintenance of Transmission System Equipment | C | |
| 384 | Maintenance of Compressing Station Equipment | A B | |
| | Maintenance of Transmission Lines | B | |
| 385 | Maintenance of Transmission Line Equipment | A | |
| 386 | Changing Transmission Lines | A | |
| | Maintenance of Other Transmission System Equipment | B | |
| 387 | Maintenance of Measuring Station Equipment | A | |
| 388 | Maintenance of Other Transmission Equipment | A | |
| | Total Transmission Expenses | | 124 23 |

34 NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)

| ACCOUNT. | | CLASS. | | | AMOUNT. | | | |
|---|---|---|---|---|---|---|---|---|
| D. DISTRIBUTION SYSTEM ACCOUNTS: | | | | | | | | |
| Operating Labor | | B | C | | | | | |
| 389 | Superintendence | A | | | | | | |
| 390 | Distribution Line Labor & Expenses | A | | | | | | |
| 391 | Labor Removing and Resetting Meters and House Regulators | A | | | | | | |
| 392 | Labor Inspecting and Testing Meters and House Regulators | A | | | | | | |
| 393 | Other Meter Department Labor | A | | | | | | |
| 394 | Other Distribution System Labor | A | | | | | | |
| Operating Supplies and Expenses | | B | C | | | | | |
| 395 | Superintendence Supplies and Expenses | A | | | | | | |
| 396 | Distribution Line Supplies and Expenses | A | | | | | | |
| 397 | Meter Department Supplies and Expenses | A | | | | | | |
| 398 | Distribution System Rent Work on Consumers' Premises | A | | | | | | |
| 399 | Other Distribution System Supplies and Expenses | A | | | | | | |
| 400 | Maintenance of Distribution System Structures | A | B | C | | | | |
| Maintenance of Distribution System Equipment | | | | C | | | | |
| Maintenance of Distribution System Lines | | | B | | | | | |
| 401 | Maintenance of Distribution Line Equipment | A | | | | | | |
| 402 | Clearing Distribution Lines | A | | | | | | |
| 403 | Maintenance of Service Line Equipment | A | | | | | | |
| Maintenance of Meters and House Regulators | | | B | | | | | |
| 404 | Maintenance of Meters | A | | | | | | |
| 405 | Maintenance of House Regulators | A | | | | | | |
| Maintenance of Other Distribution System Equipment | | | B | | | | | |
| 406 | Maintenance of Gas Receivers and District Regulating Plant Dist. Gas (Cr.) | A | | | | | | |
| 407 | Maintenance of Other Distribution Equipment & Gas Appliances | A | | | | | | |
| | Total Distribution Expenses | | | | | | | |
| E. UTILIZATION SYSTEM ACCOUNTS: | | | | | | | | |
| Operating Labor | | B | C | | | | | |
| 408 | Commercial Lighting System Labor | A | | | | | | |
| 409 | Municipal Street Lighting System Labor | A | | | | | | |
| 410 | Private Street Lighting System Labor | A | | | | | | |
| 411 | Consumer's Premises Labor | A | | | | | | |
| Operating Supplies and Expenses | | B | C | | | | | |
| 412 | Commercial Lighting System Supplies and Expenses | A | | | | | | |
| 413 | Municipal Street Lighting System Supplies and Expenses | A | | | | | | |
| 414 | Private Street Lighting System Supplies and Expenses | A | | | | | | |
| 415 | Consumers' Premises Supplies and Expenses | A | | | | | | |
| Maintenance of Utilization System Equipment | | B | C | | | | | |
| 416 | Maintenance of Commercial Lighting System | A | | | | | | |
| 417 | Maintenance of Municipal Street Lighting System | A | | | | | | |
| 418 | Maintenance of Private Street Lighting System | A | | | | | | |
| 419 | Maintenance of Other Utilization Equipment | A | | | | | | |
| | Total Utilization Expenses | | | | | | | |
| F. COMMERCIAL DEPARTMENT ACCOUNTS: | | | | | | | | |
| 420 | Operating Labor | A | B | C | | | | |
| 421 | Operating Supplies and Expenses | A | B | C | | | | |
| | Total Commercial Expenses | | | | | | | |
| G. NEW BUSINESS DEPARTMENT ACCOUNTS: | | | | | | | | |
| New Business Salaries and Commissions | | B | C | | | | | |
| 422 | New Business Salaries | A | | | | | | |
| 423 | New Business Commissions Demonstrators | A | | | | | | |
| 424 | New Business Supplies and Expenses | A | B | C | | | | |
| 425 | New Business Piping Labor — Advertising | A | B | C | | | | |
| 426 | New Business Piping Supplies and Expenses — Canvassing & Soliciting | A | B | C | | | | |
| | Total New Business Expenses | | | | | | | |

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NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)



| | ACCOUNT. | CLASS. | | | AMOUNT. | | |
|---|---|---|---|---|---|---|---|
| | H. GENERAL ADMINISTRATIVE ACCOUNTS: | | | | | | |
| | General Administrative Salaries | | B | C | | | |
| 427 | Salaries of General Officers | A | | | | 4 418 | 74 |
| 428 | Salaries of General Office Clerks | A | | | | 5 623 | 74 |
| | General Administrative Supplies and Expenses | | | C | | | |
| | General Administrative Supplies | | B | | | | |
| 429 | General Office Stationery and Printing | A | | | | 191 | 23 |
| 430 | Other General Office Supplies | A | | | | 1 241 | 98 |
| | General Officers' and General Office Clerks' Expenses | | B | | | | |
| 431 | General Officers' Expenses | A | | | | | |
| 432 | General Office Clerks' Expenses | A | | | | | |
| | Other General Administrative Expenses | | B | | | | |
| 433 | General Law Expenses | A | | | | 218 | 76 |
| 434 | General Office Rent | A | | | | | |
| 435 | Other General Office Expenses | A | | | | | |
| 436 | Maintenance of General Office Structures | A | B | C | | 89 | 81 |
| 437 | Maintenance of General Office Equipment | A | B | C | | | |
| | Total Administrative Expenses | | | | 13 | 784 | 28 |
| | I. OTHER GENERAL EXPENSE ACCOUNTS: | | | | | | |
| | General Labor | | | C | | | |
| 438 | Store Labor | A | B | | | | |
| | Stable and Garage Labor | | B | | | | |
| 439 | Stable Labor | A | | | | | |
| 440 | Garage Labor | A | | | | | |
| | Shop and Laboratory Labor | | B | | | | |
| 441 | Shop Labor INVENTORY EXPENSE | A | | | | 108 | 55 |
| 442 | Laboratory Labor | A | | | | | |
| 443 | Telephone and Telegraph System Labor | A | B | | | | |
| | General Supplies and Expenses | | | C | | | |
| 444 | Store Supplies and Expenses | A | B | | | | |
| | Stable and Garage Supplies and Expenses | | B | | | | |
| 445 | Stable Supplies and Expenses | A | | | | | |
| 446 | Garage Supplies and Expenses | A | | | | | |
| | Shop and Laboratory Supplies and Expenses | | B | | | | |
| 447 | Shop Supplies and Expenses | A | | | | | |
| 448 | Laboratory Supplies and Expenses | A | | | | | |
| 449 | Telephone and Telegraph System Supplies and Expenses | A | B | | | | |
| 450 | Natural Gas Franchise Requirements | A | B | C | | | |
| 451 | (See Gross Income Deduction Account No. 629A) | | | | | | |
| 452 | Uncollectible Consumers' Accounts | A | B | C | 1 | 350 | 12 |
| | Other General Expenses | | | C | | | |
| 453 | Public Utilities Commission Expense | A | B | | | 457 | 05 |
| | Insurance Relief and Pension Expense | | B | | | | |
| 454 | Injuries and Damages | A | | | | 312 | 38 |
| 455 | Other Insurance | A | | | | 826 | 60 |
| 456 | Relief and Pensions EMPLOYEES' WELFARE | A | | | | 315 | 14 |
| 457 | Other General Expenses | A | B | | 5 | 810 | 13 |
| | Amount Carried Forward | | | | 13 | 355 | 15 |

# NATURAL GAS—OPERATING EXPENSES—(Concluded)
(Entire Company)



| ACCOUNT. | CLASS. | | | AMOUNT. | | |
|---|---|---|---|---|---|---|
| Amount Brought Forward | | | | | | |
| General Adjustments | | | | 13 | 355 | 15 |
| 458 Inventory Adjustments | | | C | | | |
| 459 ~~Discount on Materials and Supplies~~ — Indirect Charges to Construction (Cr.) | A | B | | | 41 | 01 |
| 460 ~~Utility's Natural Gas Used in Operations~~ Dur Misc Charges (Cr.) | A | B | | | 736 | 07 |
| 461 Free Municipal Natural Gas Service | A | B | | | 757 | 11 |
| Maintenance of General Structures | A | B | | | | |
| 462 Maintenance of General Store Structures | | B | C | | | |
| 463 Maintenance of General Stable Structures | A | | | | | |
| 464 Maintenance of General Garage Structures | A | | | | | |
| 465 Maintenance of General Shop Structures | A | | | | | |
| 466 Maintenance of General Laboratory Structures | A | | | | | |
| 467 Maintenance of other General Structures | A | | | | | |
| Maintenance of General Equipment | A | | | | | |
| 468 Maintenance of General Store Equipment | | B | C | | | |
| 469 Maintenance of General Stable Equipment | A | | | | | |
| 470 Maintenance of General Garage Equipment | A | | | | | |
| 471 Maintenance of General Shop Equipment | A | | | | | |
| 472 Maintenance of General Laboratory Equipment | A | | | | | |
| 473 Maintenance of General Telephone and Telegraph System | A | | | | | |
| 474 Maintenance of other General Equipment | A | | | | | |
| 475 Depreciation | A | | | | | |
| 476 Extraordinary Depreciation | A | B | C | 53 | 639 | 00 |
| 477 Amortization of Franchises, Patent Rights and Licenses | A | B | C | | | |
| 478 Amortization of Natural Gas Rights and Leases | A | B | C | 11 | 908 | 00 |
| 479 Joint Operating Expenses Transferred | A | B | C | | | |
| Total Other General Expenses | | | | 77 | 167 | 96 |
| RECAPITULATION OF OPERATING EXPENSES: | | | | | | |
| A. Production Expenses | A | B | C | | | |
| B. Natural Gas Produced by Others | A | B | C | | | |
| C. Transmission Expenses | A | B | C | 99 | 643 | 64 |
| D. Distribution Expenses | A | B | C | | 124 | 23 |
| E. Utilization Expenses | A | B | C | 14 | 301 | 09 |
| F. Commercial Expenses | A | B | C | | | |
| G. New Business Expenses | A | B | C | 10 | 276 | 65 |
| H. Administrative Expenses | A | B | C | 2 | 332 | 87 |
| I. Other General Expenses | A | B | C | 9 | 784 | 28 |
| | A | B | C | 77 | 167 | 96 |
| Grand Total Operating Expenses | | | | 213 | 636 | 72 |

## ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—NON-OPERATING REVENUE AND EXPENSE ACCOUNTS



| ACCOUNT. | CLASS. | AMOUNT. | REMARKS. |
|---|---|---|---|
| NON-OPERATING REVENUE ACCOUNTS: | | | |
| 1. Merchandise Sales | A B C | 40,623.37 | |
| 2. Jobbing Work Revenue | A B C | 4115.21 | |
| 3. Rents from Lease of Public Utility Properties—Page 42 | A B C | | |
| 4. Rents from Lease of Other Properties—Page 42 | A B C | | |
| 5. Joint Facility Rent | A B C | | |
| 6. Interest from Investment Securities | A B C | | |
| 7. Interest from Other Sources | A B C | 1,170.62 | |
| 8. Dividends on Investment Securities | A B C | | |
| 9. Sinking Fund Revenues | A B C | | |
| 10. Depreciation Fund Revenues | A B C | | |
| 11. Insurance and Other Reserve Fund Revenues | A B C | | |
| 12. Profit from Operations of Others—Page 42 | A B C | | |
| 13. Sub-Utility Revenues—Page 42 | A B C | 780.00 | |
| 14. Oil Revenue | A B C | | |
| 15. Gasoline Revenue | A B C | | |
| 16. Other Non-Operating Revenues | A B C | 9,209.71 | |
| Total Revenues (Carry to page 39) | | 56,969.11 | |
| NON-OPERATING EXPENSE ACCOUNTS: | | | |
| 1. Merchandise Sales Expense | A B C | 52,044.45 | |
| 2. Jobbing Work Expense | A B C | 4,609.45 | |
| 3. Lease of Public Utility Properties Expense | A B C | | |
| 4. Lease of Other Properties Expense | A B C | | |
| 5. Interest Expense | A B C | | |
| 6. Dividend Expense | A B C | | |
| 7. Expenses of Procuring Profits from Operations of Others | A B C | | |
| 8. Sub-Utility Expense—Page 42 | A B C | | |
| 9. Non-Operating Taxes | A B C | | |
| 10. Uncollectible Non-Operating Revenues | A B C | | |
| 11. Oil Expense | A B C | | |
| 12. Gasoline Expense | A B C | | |
| 13. Other Non-Operating Expense | A B C | | |
| Total Expenses (Carry to page 39) | | 56,675.90 | |

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## SUB-UTILITY AND OUTSIDE OPERATIONS

If any Public Utility service is conducted other than that of Artificial Gas, Natural Gas or Electric Light, show Revenues and Expenses of such Sub-Utility hereunder.

| CLASS OF OPERATION. | GROSS REVENUE | EXPENSE | NET REVENUE OR PROFIT |
|---|---|---|---|
| None | | | |
| TOTAL. | | | |

## RENT REVENUES FROM LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

| DESCRIPTION OF PROPERTY | | Name of present lessee(s). | Rent earned during year. |
|---|---|---|---|
| Name. | Location. | | |
| Property purchased for Office Site | 318 N. Market St. - Lima, Ohio | Jacob Piper | $780.00 |
| TOTAL. | | | 780.00 |

## PROFITS AND LOSSES FROM OPERATIONS OF OTHERS

| Description of Property Operated. | Location of Property. | Name of operator. | Amount to Respondent. | |
|---|---|---|---|---|
| | | | Profit. | Loss. |
| None | | | | |
| | | TOTAL. | | |

## TAXES AND ASSESSMENTS



| KIND OF TAX | Taxes assessed or accrued during year. | | Taxes paid during year. | |
|---|---|---|---|---|
| | Ohio. | Entire. | Ohio. | Entire. |
| On the Value of Real and Personal Property Used in Operation | 32 219 44 | 32 219 44 | 44 353 58 | 44 353 58 |
| On Real Property Not Used in Operation | 978 00 | 978 00 | 897 68 | 897 68 |
| On Gross Receipts—Excise Tax | 10 538 22 | 10 538 22 | 10 538 22 | 10 538 22 |
| Public Utilities Commission Maintenance | 422 85 | 422 85 | 422 85 | 422 85 |
| Domestic Corporation | | | | |
| Franchises | | | | |
| Interest Revenue, U. S. Government | | | | |
| Federal Income and Excess Profits | 15 039 99 | 15 039 99 | 4485 39 | 4485 39 |
| Federal on Bond Coupons | | | | |
| Federal Capital Stock | | | | |
| Miscellaneous (Specify) | | | | |
| Total | 58 198 72 | 58 198 72 | 60 697 62 | 60 697 62 |

REMARKS

## RENT DEDUCTIONS FOR LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

| Description of Property. NAME. | Name of lessor or reversioner. | Total rent accrued during year. | Classification of Rent. Guaranteed interest on bonds. | Guaranteed dividends on stocks. | Cash. |
|---|---|---|---|---|---|
| | None | | | | |
| | Total, | | | | |

### ABSTRACTS OF LEASEHOLD CONTRACTS.

Give brief abstracts of the terms and conditions of the leases under which the respondent holds the properties above named, showing particularly (1) the date of the lease, (2) the chain or title and dates of transfers connecting the original lessee with the respondent in case of assignment or subletting, (3) the basis on which the amount of the annual rent is determined, and (4) the date when the lease is to terminate, or, if such date has not yet been determined, the provisions governing its determination.

In lieu of the abstracts here called for, the respondent may file copies of lease agreements and give specific references to copies heretofore filed with the Commission.

None

### FRANCHISES ACQUIRED DURING THE YEAR.

| Name of Original Grantor. | Date of grant. | Term in years. | Territory covered. | Operations covered. | Date of acquisition by respondent. | Date of authorization. | Actual money cost to respondent. | Amount at which carried on Balance Sheet |
|---|---|---|---|---|---|---|---|---|
| | None | | | | | | | |

☐ If the respondent did not acquire any of the above franchises directly from the original grantor thereof, show the chain of title connecting the original grantor and the respondent.

None

## APPROPRIATIONS OF INCOME AND SURPLUS TO SINKING AND DEPRECIATION RESERVE FUNDS

| Name and purpose of sinking or depreciation fund. | Amount charged to "Income." | Amount charged to "Corporate surplus." |
|---|---|---|
| None | | |
| TOTAL. | | |

## APPROPRIATIONS OF INCOME AND SURPLUS FOR INVESTMENT IN FIXED CAPITAL

| Name and purpose of appropriation. | Amount charged to "Income." | Amount charged to "Corporate surplus." |
|---|---|---|
| None | | |
| TOTAL. | | |

## OTHER RESERVE FUND APPROPRIATIONS OF INCOME AND SURPLUS

| Purpose of appropriation. | Amount charged to "Income." | Amount charged to "Corporate surplus." |
|---|---|---|
| None | | |
| TOTAL. | | |

Here present statements as follows: 1. All Extensions of the Respondent's Business with Other Companies. 2. All Companies from which the Respondent's Business was Withdrawn. 3. All important Purchases of Equipment for new lines. 4. All other important Physical Changes. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Funded Debt issued. 8. All changes in the respondent's holdings of Stocks and Funded Debt. 9. All other important Financial Changes.

None

## CONTRACTS, AGREEMENTS, ETC., WITHIN OHIO.

Here give a concise statement of all Contracts, Agreements, etc., with other Companies or persons, concerning the conduct of the business of the respondent, which became effective during the year covered by this report.

None

*1. If any gas purchased from other gas companies during year, state:

| Name of Company. | Number Cubic Feet | Price per M | Amount Paid. |
|---|---|---|---|
| The Ohio Fuel Gas Co. successor to Ohio Public Service Co. | 170,480,839 | 55¢ | 93764.46 |

2. Number cubic feet gas produced during year: (a) Ohio, 257,317,000 (Artificial)
(b) Entire Company, 257,317,000 ( " )

3. Number cubic feet gas distributed during year in Ohio:

| | |
|---|---|
| (a) Domestic and Commercial Sales, | 369,172,300 |
| (b) Sales to factories and industries, | 26,934,600 |
| (c) Public sales (municipalities, etc.) | 2,376,600 |
| (d) Miscellaneous gas sales, House Heating | 5,706,400 |
| (e) Sales to other gas companies, Company Use | 2,077,300 |
| Total cubic feet distributed | 406,267,200 |

*4. If any gas sold to other gas utility companies during year, state:

| Name of Company. | Number Cubic Feet. | Price per M. | Amount Received. |
|---|---|---|---|
| None | | | |

5. Number cubic feet gas brought into Ohio, None

6. Number cubic feet gas sold outside of Ohio, None

7. State kind of gas supplied and process of manufacture, Mixed Gas (Natural and Artificial)
to Lima Carburetted Water Gas

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

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1. Number of gas wells owned: (a) Ohio, None
   (b) Entire Company,
2. Number of gas wells leased and names of lessors, None
3. Number of acres under lease in Ohio at close of year, None

*4. If any gas purchased from other companies during year, state:

| Name of Company. | Number Cubic Feet. | Price per M. | Amount Paid |
|---|---|---|---|
| The Ohio Fuel Gas Co., successor to The Ohio Public Service Co. | 181,181,143 | 55¢ | 99,649.64 |

5. Number cubic feet gas produced during year: (a) Ohio, None
   (b) Entire Company,
6. Number cubic feet gas distributed during year in Ohio:

| | |
|---|---|
| (a) Domestic and commercial sales, | 152,792,700 |
| (b) Sales to factories and industries, | 3,389,800 |
| (c) Public sales (municipalities, etc.), | 543,600 |
| (d) Miscellaneous gas sales, House Heating | 156,600 |
| (e) ~~Sales to other gas companies,~~ Company Use | 487,200 |
| Total cubic feet distributed, | 157,369,900 |

*7. If any gas sold to other gas utility companies during year, state:

| Name of Company. | Number Cubic Feet. | Price per M. | Amount Received. |
|---|---|---|---|
| None | | | |

8. Number cubic feet gas brought into Ohio, None
9. Number cubic feet gas sold outside of Ohio, None
10. Number of gallons of gasoline produced during year, None
11. Number new wells drilled during year:

| | Productive | Non-Productive | Total. |
|---|---|---|---|
| (a) Ohio, | None | | |
| (b) Entire Company, | | | |

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 4.

1. Number of Stations:

2. Capacity of each station in K. W. hours:

(a) A. C.

(b) D. C.

Total capacity

3. Transmission voltage,

4. Distribution voltage,

*5. If any current purchased from other companies during year, state:

| Name of Company. | Number K. W. hours. | Price per K. W. hour. | Amount paid. |
|---|---|---|---|
| | | | |

Not Applicable.

6. Number of K. W. hours produced during year. (a) Ohio

(b) Entire Company

7. Number of K. W. hours distributed during year in Ohio:

(a) Domestic and commercial sales,

(b) Sales to factories and industries,

(c) Public sales (municipalities, etc.)

(d) Miscellaneous electric sales,

(e) Sales to other electric companies,

Total K. W. hours distributed,

*8. If any current sold to other electric utility companies during year, state:

| Name of Company. | Number K. W. hours. | Price per K. W. hour. | Amount Received. |
|---|---|---|---|
| | | | |

9. Number of meter customers.

10. Number of Flat Rate customers.

11. Is current furnished for light during day time?

*If any customers in other providing for a maximum or minimum consumption, they should be explained on page 6.

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## STATEMENT OF INTRASTATE GROSS EARNINGS FOR OHIO FOR THE YEAR COVERED BY THIS REPORT

("Intrastate" means from one point in Ohio to another point in Ohio, or wholly within Ohio.)

Attention is called to Section 606 of the General Code of Ohio, which reads as follows:

SEC. 606. For the purpose of maintaining the department of public utilities commission of Ohio, including the payment of salaries, traveling expenses, printing, rent, light, heat, water, telephones and all other overhead expenses, and the exercise of police supervision of railroads and public utilities of the state by it, a sum not exceeding two hundred thousand dollars each year shall be apportioned among and assessed upon the railroads and public utilities within the state, by the commission, in proportion to the intrastate gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are made.

On or before the first day of August next following, the commission shall certify to the auditor of state the amount of such assessment appropriated by it to each railroad and public utility and he shall certify such amount to the treasurer of state, who shall collect and pay the same into the state treasury to the credit of a special fund for the maintenance of the department of such public utilities commission.

TO THE PUBLIC UTILITIES COMMISSION OF OHIO:

For the uses and purposes designated in Section 606 of the General Code of Ohio:

We, the undersigned, E R Curtis, President,

and F L Pringle Asst. Secretary,

of _____

(Full name of respondent.)

on our oath do severally say that the amount of Intrastate Gross Earnings for the State of Ohio, for the year covered by this report, is $ 196,825.; that the same has been prepared under our direction from the original books, papers, and records of said company; that we have carefully examined the same, and declare the same to be a complete and correct statement in respect to each and every matter which should be included in Intrastate Gross Earnings, during the period for which said return is made, to the best of our knowledge, information and belief.

E R Curtis
*President.*

F L Pringle
*Asst. Secretary.*

SUBSCRIBED AND SWORN TO before me this 27th day of Feb., 1923

Alma Harbaugh
Notary Public

Notary Seal
Corporation Seal

## VERIFICATION.

The foregoing report must be verified by the oath of the officer having control of the accounting of the respondent. It should be verified, also, by the oath of the president or other chief officer of the respondent, unless the respondent states on the last preceding page of this report that such chief officer has no control over the accounting of the respondent. The oath required may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

### OATH.

(To be made by the officer having control of the accounting of the respondent.)

State of Ohio } ss.
County of Allen

E. R. Austin & F. L. Pringle makes oath and says that they are in President & Asst. Secy - respt
(Insert here the name of the affiant.) (Insert here the official title of the affiant.)

of West Ohio Gas Co.
(Insert here the exact legal title or name of the respondent.)

that it is his duty to have supervision over the books of account of the respondent and to control the manner in which such books are kept; that he knows that such books have, during the period covered by the foregoing report, been kept in good faith in accordance with the accounting and other orders of the Public Utilities Commission, effective during the said period; that he has carefully examined the said report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of account and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent

during the period of time from and including _____, 19__, to and including _____, 19__

E. R. Austin & F. L. Pringle
(Signature of affiant.)

Subscribed and sworn to before me, a notary Public, in and for the State and county above named, this 27th day of Feb., 1929

My commission expires _____ [Use an impression seal]

Alma Harlow
(Signature of officer authorized to administer oaths.)

O Seal notary
O " Corporate

### SUPPLEMENTAL OATH.

(By the president or other chief officer of the respondent.)

State of _____ } ss.
County of _____

_____ makes oath and says that he is _____
(Insert here the name of the affiant.) (Insert here the official title of the affiant.)

of _____
(Insert here the exact legal title or name of the respondent.)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above named respondent during the period of time from

and including _____, 19__, to and including _____, 19__

_____
(Signature of affiant.)

Subscribed and sworn to before me, a _____, in and for the State and county above named, this _____ day of _____, 19__

My commission expires _____ [Use an impression seal]

_____
(Signature of officer authorized to administer oaths.)

Commission Exhibit #2
of March 8, 1933

# ANNUAL REPORT

OF

West Ohio Gas Co.

Lima, Ohio - Kenton District

TO

# The Public Utilities Commission of Ohio

For the Year Ending December 31,
1929

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1ST

# INSTRUCTIONS

This form of annual report must be filled out and returned to the office of THE PUBLIC UTILITIES COMMISSION OF OHIO, Columbus, Ohio, by March 1st next.

Heretofore, it has been customary to print on the left hand pages instructions for answering questions covered by the opposite page of the report; but the Commission is of the opinion that this is not necessary, as returns often indicate that instructions have not been read or at least have not been followed, and they are therefore omitted from this form. The respondent, however, is urged to ask for instructions should there be any item in the report that is not fully understood and upon such request any information asked for will be furnished promptly.

This report form calls for Artificial Gas, Natural Gas and Electric Light operations, and any company furnishing more than one of these classes of service will report such information as is applicable for each class.

If it is necessary or desirable to insert additional statements, typewritten or other, in this report, care should be taken that they be legibly made on paper of a durable sort and, as a rule of a size not exceeding that of a page. Inserted sheets should be securely attached, preferably at inner margin.

All entries should be made in a permanent black ink, except those of a contrary or unusual character (like deficits for example), which should be made in a permanent red ink.

Each respondent should make its annual report to this Commission in duplicate, retaining one copy in its files for reference in case correspondence with regard to such report becomes necessary. For this reason two copies of the accompanying form are sent to each company concerned.

The word "respondent," whenever used in this report, means the company in whose behalf the report is made.

Attention is called to the following sections of the General Code of Ohio:

Section 614-2. Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation wherever organized or incorporated:

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating, or power purposes to consumers within this state, is a natural gas company;

Section 614-48. Every public utility shall file with the Commission, at such times and in such form as it may prescribe, an annual report, duly verified, covering the yearly period fixed by the Commission. The Commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form therefor. If any such report is defective or erroneous, the Commission may order the same to be amended within a prescribed time. Such annual reports shall be preserved in the office of the Commission. The Commission may at any time, require specific answers to questions upon which it may desire information.

Section 614-65. Whoever being an officer, agent or employe in an official capacity of a public utility or railroad defined in this act, knowingly violates any provisions of this act, or wilfully fails, omits, or neglects to obey, observe or comply with any lawful order or direction of the Commission made with respect to any public utility or railroad shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than two years, or both, and each day's continuance of such failure, omission or neglect shall constitute a separate offense.

**THE INFORMATION CALLED FOR BY EACH PAGE OF THIS REPORT, UNLESS OTHERWISE INDICATED, IS TO BE REPORTED FOR THE ENTIRE COMPANY AND NOT FOR THE STATE OF OHIO ONLY**

**DO NOT FAIL TO MAKE RETURNS OF INTRASTATE GROSS EARNINGS ON PAGE 50**

# ANNUAL REPORT

OF

West Ohio Gas Co.

Lima, Ohio

TO

# The Public Utilities Commission of Ohio

For the Year Ending December 31,
1929

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1st

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## HISTORY

1. Exact name of company making this report. The Ohio Gas Co.

2. Date of organization. Oct. 24, 1924

3. Under the laws of what Government, State or Territory organized? If more than one name all. Give reference to each statute and amendments thereof. State of Ohio

4. If a consolidated or merger company name all constituent and all merged companies. Give reference to charters or general laws governing each, and all amendments of same.

Property of the following companies purchased by respondent in Dec. 1924:
The Lima Natural Gas Co. The Lima Gas Light Co.
The Wapakoneta Natural Gas Co. The St. Marys Gas Co.
The Celina Gas Co.

5. Date and authority for each consolidation and each merger.

On authority of orders #3329 & #3330 issued by the Public Utilities Commission of Ohio dated Nov. 26, 1924.

6. State whether respondent is a corporation, a joint stock association, a firm or partnership, or an individual.

Corporation

7. If a reorganized company, give name of original corporation, refer to laws under which it was organized and the occasion for the reorganization.

8. State whether or not, the respondent during the year conducted any part of its business under a name, or names, other than that shown in response to inquiry No. 1, above. If so, give full particulars.

No

9. Where is the plant or plants located? Lima, Caldwell, Wapakoneta, St. Marys, Celina & Upton, Ohio

10. Name below all classes of public service furnished by the respondent:

Production and distribution of gas for domestic, commercial and industrial use in the above mentioned districts

## DIRECTORS.

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| NAME. | POST-OFFICE ADDRESS. | DATE OF EXPIRATION OF TERM. |
|---|---|---|
| Samuel Insull | 122 So. Michigan Ave. Chicago, Ill. | One year from March 12, 1929 or until successors is elected |
| Samuel Insull, Jr. | " " | |
| Emmett R. Curtis | Lima, Ohio | |
| E. R. Curtis, Jr. | " " | |
| F. L. Prengle | " " | |
| H. O. Bentley | " " | |
| S. E. Mulholland | Ft. Wayne, Ind. | |

## PRINCIPAL OFFICERS.

| TITLE | NAME | OFFICIAL ADDRESS |
|---|---|---|
| Chairman of the Board. | Samuel Insull | Chicago, Ill. |
| President. | Emmett R. Curtis | Lima, Ohio. |
| First Vice-President. | Samuel Insull, Jr. | Chicago, Ill. |
| Second Vice-President. | | |
| Third Vice-President. | | |
| Secretary. | B. P. Shearon | Chicago, Ill. |
| Treasurer. | H. F. Mitchell | " " |
| General Solicitor. | | |
| Attorney, or General Counsel. | H. O. Bentley | Lima, Ohio |
| Comptroller. | W. A. Bauer | Chicago, Ill. |
| Assistant Comptroller. | | |
| General Auditor. | | |
| Assistant General Auditor. | | |
| General Manager. | Emmett R. Curtis | Lima, Ohio |
| Chief Engineer. | | |
| Superintendent. | | |
| Managing Agent for the Company in Ohio. | | |

Location of principal office, at Lima, County of Allen, and State of Ohio.

Officer to whom correspondence concerning this report should be addressed:

| NAME. | TITLE. | ADDRESS. |
|---|---|---|
| Emmett R. Curtis | President | 112 W. Hamblet St. Lima, Ohio. |

4 FACTS PERTAINING TO CONTROL OF RESPONDENT.

1. Date of last meeting of stockholders for election of directors. March 12th, 1929

2. Date of last closing of stock books before end of year for which this report is made. Books do not close.

3. Total number of stockholders of record at the date required in answer to Question 2

4. Has each share of stock one vote? Each share of Common Stock has one vote

If otherwise, explain voting rights.

5. Has any issue of securities contingent voting rights? Yes

If so, explain character of such rights. Preferred stock is entitled to vote in event of default of six Quarterly dividends

6. Has any issue of securities special privileges in the election of directors?

If so, explain character of such privileges. Holders of Common Stock elect directors

7. Did any individual, association, corporation or corporations, control the respondent at close of year?

Yes

If control was so held, state:

(a) The form of control, whether sole or joint:

Sole

(b) The name of the controlling corporation or corporations:

Midland Utilities Company

(c) The manner in which control was established:

Stock Control

(d) The extent of control:

Owns all Common Stock except Directors' qualifying shares

(e) Whether control was direct or indirect:

Direct

(f) The name of the intermediary through which control, if indirect, was established.

8. Did any individual, association, or corporation, as trustee, control, the respondent at close of year?

If control was so held, state: No

(a) The name of the trustee:

(b) The name of the beneficiary or beneficiaries for whom the trust was maintained.

## CORPORATIONS CONTROLLED BY RESPONDENT

| NAME. | CONTROL. | | | | | |
|---|---|---|---|---|---|---|
| | SOLE OR JOINT. | HOW ESTABLISHED. | EXTENT. | DIRECT OR INDIRECT | IF INDIRECT, NAME OF INTERMEDIARY THROUGH WHICH CONTROL IS ESTABLISHED. | OTHER PARTIES TO AGREEMENT FOR JOINT CONTROL. |
| ACTIVE CORPORATIONS: | | None | | | | |
| INACTIVE CORPORATIONS: | | None | | | | |

Give a list showing every agreement, arrangement, or understanding in force at any time during the year, through which agreement, arrangement, or understanding the respondent became obligated or privileged to receive from, or supply to, other corporations or persons, gas, electric energy or property, or to receive or render any service of any class which respondent is obligable or privileged to receive or render, the terms of which agreement differ in any regard whatever from those upon which any person is of common right entitled or bound to supply to, or to receive from, the respondent, gas, electric energy or property, or any service of any kind which respondent is obligable to receive or render. Show for each agreement: (1) the names and addresses of the parties thereto, (2) the date when it became effective, (3) the date when according to its terms it will expire, (4) the consideration upon which it is based, and (5) the amount of business done under it during the year. If there was no such agreement, state that fact.

## SHOW ARTIFICIAL GAS CUSTOMERS ON THIS PAGE



The respondent will show on this page the names of cities or villages in which it supplies artifical gas, with number of customers in each.

If any public utility product other than that designated by pages 6, 7 and 8, is supplied, name such product on this page, giving names of cities or villages supplied, with number of customers in each.

| CITY OR TOWN. | NUMBER OF CUSTOMERS. | CITY OR TOWN | NUMBER OF CUSTOMERS. |
|---|---|---|---|
| | | BROUGHT FORWARD, | |
| Lima | 10,139 | | |
| FORWARD, | | TOTAL, | |

C
O
P
Y

WEST OHIO GAS COMPANY

112 West Market Street

Lima, Ohio.

September 17, 1930.

Mr. Ira E. Sprankle
Superintendent of Investigation
Public Utilities Commission of Ohio
Columbus, Ohio.

Dear Mr. Sprankle:

In reply to your letter under date of September 15th, addressed to Mr. Curtis, relative to serving customers in Cridersville, we wish to advise that in our report to your Commission for the year 1929 the customers served in Cridersville, were included in the number reported for Lima in error.

The report should read 10,017 customers in Lima supplied with artificial and 122 in Cridersville supplied with natural gas.

We regret that this error was made and want to thank you for calling our attention to same.

Yours very truly,

WEST OHIO GAS COMPANY

F. L. Pringle
Ass't. Treas.

FLP:AL

8 SHOW NATURAL GAS CUSTOMERS ON THIS PAGE.

The respondent will show on this page the names of cities or villages in which it supplies natural gas, with number of customers in each.
If consumers are supplied outside of cities and villages in rural territory, give name of township with number of customers.

| CITY OR TOWN. | NUMBER OF CUSTOMERS. | CITY OR TOWN. | NUMBER OF CUSTOMERS. |
|---|---|---|---|
| | | BROUGHT FORWARD. | |
| | | Wapakoneta | 1,448 |
| | | St. Marys | 1353 |
| | | Celina | 1043 |
| | | Kenton | 1930 |
| FORWARD. | | TOTAL. | 5768 |

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## GENERAL BALANCE SHEET

### ASSET ACCOUNTS

| ACCOUNT. | ITEM. | TOTAL. |
|---|---|---|
| **I. FIXED CAPITAL ACCOUNTS:** | | |
| Fixed Capital—Pages 13, 16, 18 | 3 602 544 20 | |
| Cost of Fixed Capital purchased | | |
| Construction work in progress | | |
| **II. INVESTMENT ACCOUNTS:** | | |
| Investment Securities—Page 19 | 50 00 | |
| Property Used in Other Public Services—Page 19 | | |
| Advances to Affiliated Companies for Construction, Equipment, or Additions and Betterments—Page 19 | | |
| Other Investments—Page 19 | | |
| **III. REACQUIRED SECURITIES ACCOUNTS:** | | |
| Reacquired Capital Stock | 27 000 00 | |
| Reacquired Bonds | | |
| **IV. FUND ACCOUNTS:** | | |
| Sinking Fund Assets—Page 20 | | |
| Depreciation Fund Assets—Page 20 | | |
| Insurance and Other Reserve Fund Assets—Page 20 | | |
| **V. SPECIAL DEPOSIT ACCOUNTS:** | | |
| Interest Special Deposits—Page 21 | | |
| Dividend Special Deposits—Page 21 | | |
| Other Special Deposits—Page 21 | 800 00 | |
| **VI. CURRENT ASSET ACCOUNTS:** | | |
| Cash | 14 521 76 | |
| Notes Receivable—Page 21 | 575 00 | |
| Accounts Receivable from Consumers | 48 462 20 | |
| Accounts Receivable from Affiliated Companies—Page 21 | 278 25 | |
| Other Accounts Receivable | 32 446 88 | |
| Matured Interest and Rents Receivable | | |
| Materials and Supplies | 41 310 81 | |
| Subscriptions to Capital Stock | | |
| Other Current Assets | 25 000 00 | |
| **VII. ACCRUED ASSET ACCOUNT:** | | |
| Unmatured Interest and Rents Receivable | | |
| **VIII. PREPAID ACCOUNTS:** | | |
| Prepaid Insurance | 1 309 68 | |
| Prepaid Interest | | |
| Prepaid Taxes | | |
| Other Prepaid Accounts | | |
| **IX. DEFERRED CHARGE ACCOUNTS:** | | |
| Discount on Capital Stock | 90 624 86 | |
| Unamortized Debt Discount and Expense | 97 624 40 | |
| Property Abandonment—Page 22 | | |
| Extraordinary Casualties | | |
| Non-Productive Well Drilling Expense | | |
| Preliminary Survey and Investigation Charges | | |
| Other Deferred Charges | 41 279 68 | |
| **Grand Total** | 4 024 327 31 | |

## GENERAL BALANCE SHEET

### LIABILITY ACCOUNTS

| ACCOUNT. | ITEM. | TOTAL. |
|---|---|---|
| I. CORPORATE CAPITAL LIABILITY ACCOUNTS: | | |
| Capital Stock—Page 23 | 2 916 981 50 | |
| Installments Paid on Capital Stock Subscriptions | | |
| Stock Liability for Conversion of Securities | | |
| Premium on Capital Stock | | |
| II. NON-CORPORATE PROPRIETORSHIP ACCOUNTS: | | |
| Sole Proprietorship | | |
| Partnership | | |
| III. FUNDED DEBT ACCOUNTS—Page 23. | | |
| Bonds | 1 000 000 00 | |
| Real Estate Mortgages | | |
| Advances from Affiliated Companies for Construction | | |
| Equipment, or Additions and Betterments | | |
| Other Funded Debt | | |
| IV. CURRENT LIABILITY ACCOUNTS: | | |
| Receiver's Certificates | | |
| Judgments | | |
| Workmen's Compensation | | |
| Notes Payable—Page 25 | 160 000 00 | |
| Consumer's Deposits | 43 644 73 | |
| Accounts Payable to Affiliated Companies—Page 25 | 4 252 28 | |
| Other Accounts Payable | 37 415 73 | |
| Matured Funded Debt—Page 25 | | |
| Matured Interest on Funded Debt | | |
| Matured Interest on Unfunded Debt | | |
| Dividends Payable | | |
| Service Billed in Advance | | |
| Capital Stock Subscribed | | |
| Other Current Liabilities | 703 03 | |
| Pension Contrib. | 15 000 00 | |
| V. ACCRUED LIABILITY ACCOUNTS: | | |
| Unmatured Interest Accrued on Funded Debt | 5 000 00 | |
| Unmatured Interest Accrued on Unfunded Debt | 187 50 | |
| Taxes Accrued | 68 304 46 | |
| Other Accrued Liabilities | | |
| VI. DEFERRED CREDIT ACCOUNTS: | | |
| Unamortized Premium on Debt | | |
| Other Deferred Credits | | |
| Public Improvement Contribution | 2 446 84 | |
| VII. RESERVE ACCOUNTS: | | |
| Insurance Reserve—Page 26 | | |
| Injuries and Damages Reserve—Page 26 | 2 301 51 | |
| Uncollectible Customers' Accounts Reserve—Page 26 | 4 449 32 | |
| Depreciation of Structures and Equipment Reserve—Page 26 | 186 798 72 | |
| Amortization of Other Capital Reserve—Page 26 Franchise Fees | 64 102 54 | |
| Other Reserves—Page 26 | | |
| Street Main Contributions | 20000 | |
| VIII. APPROPRIATED SURPLUS ACCOUNTS: | | |
| Surplus Invested in Fixed Capital | | |
| Funded Debt Retired through Surplus | | |
| Surplus Reserved for Sinking Funds | | |
| Other Surplus Reserves | | |
| IX. UNAPPROPRIATED SURPLUS ACCOUNT: | | |
| Corporate Surplus Unappropriated* | 52 887 84 | |
| Grand Total | 4 024 327 31 | |

*Insert "Debit" or "Credit" as may be appropriate, showing the amount of debit in red.

## FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS

| ACCOUNT. | Balance at beginning of year | Charges for Capital added during year. | Credits made to sub-account during year. | Balance at close of year. |
|---|---|---|---|---|
| INTANGIBLE FIXED CAPITAL: | | | | |
| 1. Organization | | | | |
| 2. Franchises | | | | |
| 3. Miscellaneous intangible capital | | | | |
| TANGIBLE FIXED CAPITAL: | | | | |
| 4. Land: | | | | |
| (a) Land occupied by gas works | 4 834 87 | | | 4 834 87 |
| (b) Land occupied by outside holder stations | | | | |
| (c) Rights of way | | | | |
| (d) Water rights | | | | |
| (e) General office land | | | | |
| (f) Miscellaneous land devoted to gas operations | | | | |
| 5. Structures: | | | | |
| (a) Works and station structures | 38 282 56 | | | 38 282 56 |
| (b) Holders | | | | |
| (c) General office structures | | | | |
| (d) Miscellaneous structures devoted to gas operations | 22 330 21 | | | 22 330 21 |
| 6. Boiler plant equipment | 1 743 80 | | | 1 743 80 |
| 7. Steam engines | | | | |
| 8. Internal combustion engines | | | | |
| 9. Accessory power equipment | | | | |
| 10. Benches and retorts | | | | |
| 11. Water gas sets | 5 968 00 | | | 5 968 00 |
| 12. Purification apparatus | | | | |
| 13. Accessory works equipment | 2 887 42 | | | 2 887 42 |
| 14. Mains | | | | |
| 15. Services | | | | |
| 16. Consumers' meters | | | | |
| 17. Consumers' Meter installation | | | | |
| 18. Street lighting equipment | | | | |
| 19. Gas appliances | | | | |
| | 76 036 36 | | | 76 036 36 |

## FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS — (Continued)

| ACCOUNT | Balance at beginning of year. | Charges for capital added during year. | Credits made to adjustment during year. | Balance at close of year. |
|---|---|---|---|---|
| 20. General equipment: | | | | |
| (a) General office equipment | | | | |
| (b) Shop equipment | | | | |
| (c) Stores equipment | | | | |
| (d) Transportation equipment | | | | |
| (e) Telephone, telegraph and wireless system | | | | |
| (f) Laboratory equipment | | | | |
| (g) Miscellaneous equipment | | | | |
| 21. Miscellaneous tangible capital | | | | |
| 22. Engineering and superintendence during construction | | | | |
| 23. Law expenditures during construction | | | | |
| 24. Injuries and damages during construction | | | | |
| 25. Taxes during construction | | | | |
| 26. Interest during construction | | | | |
| 27. Miscellaneous construction expenditures | | | | |
| 28. Fixed capital not classified by prescribed accounts | | | | |
| 29. Cost of plant and equipment purchased | | | | |
| 30. Unfinished Plant Investment (construction work in progress) | | | | |
| Total | 76036 36 | | | 76036 36 |

240

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THIS PAGE FOR NATURAL GAS COMPANIES

## FIXED CAPITAL INSTALLED PRIOR TO ~~JANUARY 1, 1921~~ Dec. 1, 1924

Give particulars of the credits made during the year in the accounts of the respondent representing its plant and equipment installed in service prior to January 1, 1921.

If the respondent's classification of fixed capital accounts in conformity with the principles embodied in the account for Fixed Capital Installed since December 31, 1920, became effective at an earlier date, the dates in the headings of the present schedule and the following schedule may be correspondingly modified.

Names of subaccounts shown in column (a) should be those carried on the respondent's books of account immediately prior to the adoption of the Uniform System of Accounts for Natural Gas Companies or its equivalent.

If the respondent's accounts representing plant and equipment installed prior to January 1, 1921, have been reclassified in accordance with the rules governing accounts for fixed capital installed since December 31, 1920, there may be shown in column (a) the names of accounts now carried on respondent's books representing such plant and equipment instead of those carried prior to the adoption of the Uniform System of Accounts for Natural Gas Companies.

In connection with the credits called for in column (c) of this schedule and column (d) of schedule on page 15, see paragraph 2, page 18, of the Uniform System of Accounts for Natural Gas Companies.

| NAMES OF ACCOUNTS KEPT PRIOR TO JANUARY 1, 1921. (a) | Balances at beginning of year. (b) | Credits made to sub-accounts during year. (c) | Balances at close of year. (d) |
|---|---|---|---|
| Plant & Property purchased | 3108 268 28 | 2 242 89 | 3 106 025 39 |
| Total | 3108 268 28 | 2 242 89 | 3 106 025 39 |



FIXED CAPITAL INSTALLED SINCE DECEMBER 31, 1920, NATURAL GAS

FIXED CAPITAL INSTALLED SINCE DECEMBER ~~31, 2000~~ 1942—NATURAL GAS

| ACCOUNT (a) | Balance at beginning of year. (b) | Charges for capital added during year. (c) | Credits made to subaccount during year. (d) | Balance at close of year. (e) |
|---|---|---|---|---|
| I. UNDISTRIBUTED FIXED CAPITAL ACCOUNTS: | | | | |
| 200 Organization | 28 812 73 | | | 28 812 73 |
| 201 Franchises | | | | |
| 202 Patent Rights and Licenses | | | | |
| 203 Other Undistributed Fixed Capital | | | | |
| II. PRODUCTION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 204 Land | | | | |
| 205 Leaseholds | | | | |
| 206 Rights of Way | | | | |
| 207 Natural Gas Rights | | | | |
| 208 Gas Well Structures | | | | |
| 209 Field Measuring Station Structures | | | | |
| 210 Other Production System Structures | | | | |
| 211 Gas Well Construction | | | | |
| 212 Gas Well Equipment | | | | |
| 213 Field Line Construction | | | | |
| 214 Field Line Equipment | | | | |
| 215 Field Measuring Station Equipment | | | | |
| 216 Drilling and Cleaning Equipment | | | | |
| 217 Other Production System Equipment | | | | |
| III. TRANSMISSION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 218 Land | 515 26 | | | 515 26 |
| 219 Leaseholds | | | | |
| 220 Rights of Way | | | | |
| 221 Compressing Station Structures | | | | |
| 222 Transmission System Measuring Station Structures | | | | |
| 223 Other Transmission System Structures | | | | |
| 224 Compressing Station Equipment | | | | |
| 225 Transmission System Measuring Station Equipment | | | | |
| 226 Transmission Line Equipment | | | | |
| 227 Other Transmission System Equipment | | | | |
| IV. DISTRIBUTION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 228 Land | | | | |
| 229 Leaseholds | | | | |
| 230 Rights of Way | | | | |
| 231 District Regulator Structures | 127 46 | | | 127 46 |
| 232 Other Distribution System Structures | | | | |
| 233 Gas Receivers and District Regulators | 2 415 12 | | | 2 415 12 |
| 234 Distribution Line Equipment | 160 822 72 | 2 612 61 | | 163 435 33 |
| 235 Service Line Equipment | 26 533 72 | 2 416 46 | | 28 950 18 |
| 236 Meters | 16 327 59 | 4 862 05 | | 21 189 63 |
| 237 Meter Installations | 6 009 72 | 1 616 29 | | 7 626 01 |
| 238 House Regulators | | | | |
| 239 Other Distribution System Equipment | | | | |

334

241
15

## FIXED CAPITAL INSTALLED SINCE DECEMBER 31, 1920—NATURAL GAS

| ACCOUNT. (a) | Balance at beginning of year. (b) | Charges for capital added during year. (c) | Credits made to subaccount during year. (d) | Balance at close of year. (e) |
|---|---|---|---|---|
| **V. UTILIZATION SYSTEM PROPERTY ACCOUNTS:** | | | | |
| 240 Commercial Lighting System | | | | |
| 241 Municipal Street Lighting System | | | | |
| 242 Private Street Lighting System | | | | |
| 243 Other Utilization Equipment | | | | |
| **VI. GENERAL PROPERTY ACCOUNTS:** | | | | |
| 244 General Office Land | 50 000 00 | | | 50 000 00 |
| 245 Other General Land | | | | |
| 246 Leaseholds | | | | |
| 247 General Office Structures | 639 68 | | | 639 68 |
| 248 Other General Structures | | | | |
| 249 General Office Equipment | 8 471 67 | | | 8 471 67 |
| 250 General Store Equipment | | | | |
| 251 General Shop Equipment | 1 134 65 | 298 96 | | 1 433 61 |
| 252 General Stable Equipment | | | | |
| 253 General Garage Equipment | 12 822 72 | 2 127 27 | 1 979 50 | 12 970 49 |
| 254 General Laboratory Equipment | | | | |
| 255 General Telephone and Telegraph System | | | | |
| 256 General Tools and Implements | | | | |
| 257 Other General Equipment | 1 076 07 | 229 63 | | 1 305 70 |
| **VII. UNDISTRIBUTED CONSTRUCTION EXPENDITURE ACCOUNTS:** | | | | |
| 258 Engineering and Superintendence during construction | | | | |
| 259 General Officers' and Clerks' salaries during construction | | | | |
| 260 General Officers' and Clerks' expenses during construction | | | | |
| 261 Office Supplies and Expenses during construction | | | | |
| 262 Law Expenditures during construction | | | | |
| 263 Injuries and Damages during construction | | | | |
| 264 Insurance during construction | | | | |
| 265 Taxes during construction | | | | |
| 266 Interest during construction | 950 02 | | | 950 02 |
| 267 Other Expenditures during construction | | | | |
| Construction in Progress | 71 00 | | | 71 00 |
| | 7 788 36 | 73 030 00 | | 80 868 36 |
| Total | 335 218 68 | 87 243 27 | 1 979 50 | 420 482 45 |
| **SUMMARY OF FIXED CAPITAL:** | | | | |
| Installed Prior to ~~January 1, 1921~~ Dec. 1, 1924 | 3 108 268 28 | • • • • • • • • | 2 242 89 | 3 106 025 39 |
| Installed Since ~~December 31, 1920~~ Dec. 1, 1924 | 335 218 68 | 87 243 27 | 1 979 50 | 420 482 45 |
| Total | 3 443 486 96 | 87 243 27 | 4 222 39 | 3 526 507 84 |

335-337

## INVESTMENT SECURITIES

| NAME OF ISSUING COMPANY AND DESCRIPTION OF SECURITY HELD | PLEDGED | | UNPLEDGED | | INCOME DERIVED | | | Nature of control, if control exists. |
|---|---|---|---|---|---|---|---|---|
| | Par value. | Book value. | Par value. | Book value. | Rate. | Amount of dividends. | Amount of interest. | |
| Investment of Affiliated Companies: | | | None | | | | | |
| Investment of Non-Affiliated Companies: | | | None | | | | | |
| Other Investments: | | | | | | | | |
| One share no par stock in the Lima Gasoline Company | | 50 00 | | | | 11 00 | | |
| Total | | 50 00 | | | | 11 00 | | |

## FUND ACCOUNTS

| NAME OF FUND. | Par value | Book value | Balance in Fund at beginning of year. | Additions to Fund During Year. | Withdrawals from Fund During Year. | Balance in Fund at close of year. |
|---|---|---|---|---|---|---|
| Sinking Fund Assets. | | | | | | |
| Depreciation Fund Assets: | | | | | | |
| Insurance and Other Reserve Fund Assets: | | | | | | |
| Total | | | | | | |



20,244

## CASH AND SPECIAL DEPOSITS

21

| Name of depositary. | Purpose of Deposit | Amount at close of year |
|---|---|---|
| The Lima Trust Company, Lima, O. | Operations | 11,448.90 |
| Peoples National Bank - Wapakoneta, O | " | 595.04 |
| American State Bank - St Marys, O | " | 599.88 |
| The Commercial Bank Company - Celina, O. | " | 650.17 |
| The Commercial Bank - Kenton, O | " | 588.27 |
| Petty Cash Funds | " | 120.00 |
| Payroll Cash Funds - Lima Trust Co. - Lima O. | " | 200.00 |
| Halsey Stuart Company - Chicago, Ill. | To cover 2% renewal tax on Bond Holder's interest | 600.00 |
| | Total | 15,321.76 |

## NOTES AND ACCOUNTS RECEIVABLE

### Bills Receivable.

| Name of debtor | Amount at close of year |
|---|---|
| Harry Hildreth | 200.00 |
| Joseph Cabrino | 275.00 |
| Total | 575.00 |

### *Miscellaneous Accounts Receivable.

| Name of debtor | Amount at close of year |
|---|---|
| Calls receivable - The Consumers | 46,963.30 |
| Checks " - mercantile | 31,111.62 |
| " " - Sundry | 1,334.76 |
| Total | 81,409.68 |

## ACCOUNTS RECEIVABLE FROM AFFILIATED COMPANIES

| Name of debtor. | Character of transaction | Amount at close of year |
|---|---|---|
| The Delphos Heat Company | materials transferred | 372.25 |
| | Total | 372.25 |

*Show principal items only. Minor items may be reported in one group.

## PROPERTY ABANDONED

| Items. | Year of Abandonment | Balance in Account at beginning of year | Amount Charged to Account during year | Amount Credited to Account during year | Balance in Account at close of year |
|---|---|---|---|---|---|
| Total | | None | | | |

REMARKS

CAPITAL STOCK

| CLASS OF STOCK | NUMBER OF SHARES AUTHORIZED | PAR VALUE OF EACH SHARE | TOTAL PAR VALUE AUTHORIZED* | TOTAL PAR VALUE OUTSTANDING | TOTAL PAR VALUE HELD BY OR FOR COMPANY | IN TREASURY | IN SINKING OR OTHER FUNDS | TOTAL PAR VALUE NOT HELD BY OR FOR COMPANY | DIVIDENDS DECLARED DURING YEAR |
|---|---|---|---|---|---|---|---|---|---|

| CLASS OF STOCK. | NUMBER OF SHARES AUTHORIZED. | PAR VALUE OF ONE SHARE. | TOTAL PAR VALUE AUTHORIZED* | TOTAL PAR VALUE OUTSTANDING. | TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY. | IN SINKING OR OTHER FUNDS. | TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION. | DIVIDENDS DECLARED DURING YEAR. Rate | AMOUNT. |
|---|---|---|---|---|---|---|---|---|---|
| Common | 15,000 | no par | | 15,000 shares | | | | | 52,500.00 |
| Preferred Class "A" | 3,000 | 100 | 300,000.00 | 300,000.00 | | | 300,000.00 | 7 | 21,000.00 |
| " " "B" | 4,500 | 100 | 450,000.00 | 450,000.00 | | | 450,000.00 | 7 | 31,500.00 |
| TOTAL | $12,500 | | | | | | | | 105,000.00 |

## FUNDED DEBT.

| DESIGNATION OF BOND OR OBLIGATION. | TERM. Date of Issue | TERM. Date Maturity | TOTAL PAR VALUE AUTHORIZED* | TOTAL PAR VALUE OUTSTANDING. | TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY. | IN SINKING OR OTHER FUNDS. | TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION | INTEREST. Rate | When Pay able. | AMOUNT ACCRUED DURING YEAR. | AMOUNT PAID DURING YEAR. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| First & Refunding M/G Mortgage Bonds | 24 | 54 | 1,000,000 | 1,000,000 | none | | 1,000,000 | 6 | Semi-Annually | 60,000 | 60,000 |
| TOTAL | | | 1,000,000 | 1,000,000 | | | 1,000,000 | | | 60,000 | 60,000 |

*Purpose for which issue was authorized.

Receipts Outstanding at the close of the year for installments received on subscriptions for stocks were as follows:

Common stock, $ ; Second preferred stock, $ ; First preferred stock, $ ; Debenture stock, $ ; All classes, $

346

23

24

## SECURITY FOR FUNDED DEBT.

| DESIGNATION OF BOND OR OBLIGATION | PROPERTY MORTGAGED AND SECURITIES PLEDGED. DESCRIPTION. | VALUE. | REMARKS. |
|---|---|---|---|
| First and Refunding Mortgage Bonds | Entire Property | 3519523 32 | |

## SUNDRY CURRENT LIABILITIES

| NAME OF CREDITOR OR OBLIGATION. | CHARACTER OF TRANSACTIONS INVOLVED. | Credit balance at close of year. |
|---|---|---|
| | Notes Payable | |
| Midland Utilities Co. | Advances for construction | 160 000 00 |
| | Total, | 160 000 00 |
| | Accounts Payable to Affiliated Companies | |
| Northern Pub. Service Co. | Materials Transferred | 805 64 |
| Insurance Trustee | Insurance Premiums | 689 21 |
| Midland Stock Transfer Co. | Services Rendered | 34 |
| Midland Utilities Co. of Indiana | Supplies Furnished | 105 32 |
| Midland United Company | Services Rendered | 1 693 81 |
| Midland Utilities Company | Interest | 918 34 |
| | Total, | 4 252 28 |
| | Matured Funded Debt | |
| | Total, | |

## DEPRECIATION OF STRUCTURES AND EQUIPMENT RESERVE

| DEBIT ITEMS. | | CREDIT ITEMS. | |
|---|---|---|---|
| Retirements During the Year | $ 1 035 09 | Balance at Beginning of Year | 134 224 50 |
| Other Debits: | 132 01 | Amount Reserved During the Year by Charges to Operating Expenses | 58 741 82 |
| | | Other Credits: | |
| Balance at Close of Year | 184 798 72 | | |
| Total, | 194 965 82 | Total, | 194 965 82 |

## BASIS FOR DEPRECIATION RESERVE.

Explain here in detail the basis upon which the charge to operating expenses on account of depreciation is founded and also the method by which the amount in question was derived. The amount here shown will be the same as that carried to "Depreciation of Structures and Equipment Reserve" on the General Balance Sheet.

Depreciation of transmission property in accordance with an order of the Public Utilities Commission of Ohio

Depreciation of automotive equipment based on actual cost less salvage amortized over life of equipment

## RESERVES

| DEBIT ITEMS | | CREDIT ITEMS | |
|---|---|---|---|
| **INSURANCE RESERVES** | | | |
| | | Balance at Beginning of Year | |
| | | Amount Reserved During the Year by Charges to Operating Expenses | |
| | | Other Credits: None | |
| Balance at Close of Year | | | |
| Total. | | Total. | |
| **INJURIES AND DAMAGES RESERVE** | | | |
| Charges acct Injuries and Damages | 228 42 | Balance at Beginning of Year | 1 510 43 |
| | | Amount Reserved During the Year by Charges to Operating Expenses | 1 000 00 |
| | | Other Credits: | 18 00 |
| Balance at Close of Year | 3 301 61 | | |
| Total. | 2 529 43 | Total. | 2 529 43 |
| **UNCOLLECTIBLE CONSUMERS' ACCOUNTS RESERVE** | | | |
| Uncollectibles written charged off | 2 427 68 | Balance at Beginning of Year | 4 317 01 |
| Adjusting 1928 Reserve | 1 634 33 | Amount Reserved During the Year by Charges to Operating Expenses | 4 444 32 |
| | | Other Credits: | |
| Balance at Close of Year | 4 440 22 | | |
| Total. | $ 7 461 83 | Total. | $ 7 461 83 |
| **AMORTIZATION OF ~~OTHER CAPITAL RESERVE~~** Transmission Lines | | | |
| | | Balance at Beginning of Year | 52 395 54 |
| | | Amount Reserved During the Year by Charges to Operating Expenses | 11 708 00 |
| | | Other Credits: | |
| Balance at Close of Year | 64 103 54 | | |
| Total. | 64 103 54 | Total. | 64 103 54 |
| **OTHER RESERVES** | | | |
| | | Balance at Beginning of Year | |
| | | Amount Reserved During the Year by Charges to Operating Expenses | |
| | | Other Credits: | |
| Balance at Close of Year | | | |
| Total. | | Total. | |

**MEMORANDUM**

Use this page for an explanation of any item contained in this report where sufficient space is not available.

## CORPORATE SURPLUS UNAPPROPRIATED

| ITEM | DEBITS | | | | CREDITS | | | | REMARKS |
|---|---|---|---|---|---|---|---|---|---|
| **CREDITS:** | | | | | | | | | |
| Credit balance at beginning of year | ** | ** | ** | * | | 47 | 655 | 26 | |
| Credit balance transferred from Income Account | ** | ** | ** | * | | 4 | 484 | 75 | |
| Uncollectible Consumers' Accounts recovered | ** | ** | ** | * | | | | | |
| Uncollectible Non-Operating Revenues recovered | ** | ** | ** | * | | | | | |
| Other Additions to Surplus | ** | ** | ** | * | | | | | |
| Miscellaneous Credits | ** | ** | ** | * | | 2 | 254 | 36 | |
| **DEBITS:** | | | | | | | | | |
| Debit balance at beginning of year | | | | | ** | ** | ** | * | |
| Debit balance transferred from Income Account | | | | | ** | ** | ** | * | |
| Surplus Appropriated for Sinking Funds | | | | | ** | ** | ** | * | |
| Surplus Appropriated for Other Reserve Funds | | | | | ** | ** | ** | * | |
| Surplus Appropriated for Dividends—Page 28 | | | | | ** | ** | ** | * | |
| Surplus Appropriated for Investment in Fixed Capital | | | | | ** | ** | ** | * | |
| Gifts to Affiliated Companies | | | | | ** | ** | ** | * | |
| Expenses unprovided for elsewhere | | | | | ** | ** | ** | * | |
| Amortization unprovided for elsewhere | | | | | ** | ** | ** | * | |
| Other Appropriations of Surplus | | | | | ** | ** | ** | * | |
| Other Deductions from Surplus | | | | | ** | ** | ** | * | |
| Uncollectible Consumers' Accounts—Old Year | | | | | ** | ** | ** | * | |
| Uncollectible Non-Operating Revenues—Old Year | | | | | ** | ** | ** | * | |
| Miscellaneous Debits | | 1 | 506 | 53 | ** | ** | ** | * | |
| Balance carried forward to Balance Sheet | | 52 | 887 | 84 | | | | | |
| Total | | 54 | 394 | 37 | | 54 | 394 | 37 | |

## DIVIDENDS DECLARED DURING THE YEAR.

| NAME OF SECURITY ON WHICH DIVIDEND WAS DECLARED | Rate Per Cent. Regular. | Rate Per Cent. Extra. | Par value of amount on which dividend was declared. | *Amount of dividend. | Date. Declared. | Date. Payable. |
|---|---|---|---|---|---|---|
| Dividends Charged to Income: | | | | | | |
| Class A Preferred - 1st Quarterly | 1 3/4 | | 300 000 00 | 5 250 00 | 1/30/29 | 3/1/29 |
| " " " - 2nd " | " | | 300 000 00 | 5 250 00 | 3/22/29 | 6/1/29 |
| " " " - 3rd " | " | | 300 000 00 | 5 250 00 | 7/19/29 | 9/2/29 |
| " " " - 4th " | " | | 300 000 00 | 5 250 00 | 10/29/29 | 12/2/29 |
| " B " - " | 1 3/4 | | 450 000 00 | 7 875 00 | 1/30/29 | 3/1/29 |
| " " " - " | " | | 450 000 00 | 7 875 00 | 3/22/29 | 6/1/29 |
| " " " " | " | | 450 000 00 | 7 875 00 | 7/19/29 | 9/2/29 |
| " " " " | " | | 450 000 00 | 7 875 00 | 10/29/29 | 12/2/29 |
| Common Stock - 10¢ per share | | | | 7 500 00 | 4/25/29 | 8/1/29 |
| " " 20¢ " " | | | | 15 000 00 | 7/19/29 | 7/25/29 |
| " " 20¢ " " | | | | 15 000 00 | 10/29/29 | 11/6/29 |
| " " 20¢ " " | | | | 15 000 00 | 12/30/29 | 12/28/29 |
| Total Charged to Income | | | | 105 000 00 | | |
| Dividends Charged to Surplus: | | | | | | |
| Total Charged to Surplus: | | | | 105 000 00 | | |
| Grand Total | | | | | | |

*Total of this column should correspond with like item on page 28.

## INCOME ACCOUNT
(Entire Company)

| ACCOUNT. | AMOUNT | | | REMARKS. |
|---|---|---|---|---|
| **I. OPERATING INCOME:** | | | | |
| Operating Revenues—Page 30 | 744 | 241 | 55 | |
| Operating Expenses—Pages 32-36-40 | [illegible] | [illegible] | [illegible] | |
| *Net Operating Revenue | 235 | 701 | 47 | |
| **II. NON-OPERATING REVENUES AND EXPENSES** | | | | |
| Revenues—Page 41 | 66 | 953 | 13 | |
| Expenses—Page 41 | 62 | 832 | 46 | |
| *Net Non-Operating Revenue | 4 | 120 | 67 | |
| *Total Net Operating Income (Total Items 3 & 6) | 239 | 822 | 14 | |
| Taxes Assignable to Operations—Page 43 | 58 | 556 | 36 | |
| *Gross Income (Item 7 less Item 8) | 181 | 265 | 78 | |
| **III. GROSS INCOME DEDUCTIONS.** | | | | |
| Rent for Lease of Public Utility Properties—Page 44 | | | | |
| Joint Facility Rent | | | | |
| Other Rent Deductions | | | | |
| Interest Accrued on Funded Debt—Page 23 | 60 | 000 | 00 | |
| Interest Accrued on Unfunded Debt | 9 | 877 | 95 | |
| Guaranties of Periodic Payments | | | | |
| Loss on Operations of Others | | | | |
| Other Contractual Deductions from Income | | | | |
| Amortization of Debt Discount and Expense | 3 | 913 | 68 | |
| Amortization of Interests in Landed Capital | | | | |
| Other Deductions from Income | | 606 | 67 | |
| Amortization of Premium on Debt | | | | |
| Interest on Idle Investment (Cr.) | 1 | 355 | 52 | |
| Total Deductions from Gross Income | 73 | 042 | 78 | |
| *Net Income (Item 9 less Item 22) | 108 | 223 | 00 | |
| **IV. NET INCOME APPROPRIATIONS** | | | | |
| Net Income Appropriated for Sinking Funds—Page 45 | | | | |
| Net Income Appropriated for Depreciation Reserve Fund—Page 45 | | | | |
| Net Income Appropriated for Other Reserve Funds—Page 45 | | | | |
| Net Income Appropriated for Dividends—Page 28 | 103 | 738 | 25 | |
| Net Income Appropriated for Investment in Fixed Capital—Page 45 | | | | |
| Total Appropriations of Income | 103 | 738 | 25 | |
| *Balance transferred to surplus—Page 28 (Item 23 less Item 29) | 4 | 484 | 75 | |

The operating revenues and expenses above stated relate to the period beginning June 1st, 1938, and ending Dec. 31st, 1938.

...deficit, in Red.

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| ACCOUNT. | CLASS. | | | AMOUNT. | | | | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| **ARTIFICIAL GAS REVENUES:** | | | | | | | | |
| 1. Metered Domestic and Commercial Sales | A | B | C | | 480 | 433 | 45 | |
| 2. Metered Industrial Sales | A | B | C | | 22 | 676 | 36 | |
| 3. Metered Sales for Municipal Street Lighting | A | B | C | | | | | |
| 4. Metered Sales for Other Municipal Purposes | A | B | C | | 2 | 216 | 44 | |
| 5. Metered Sales to Other Gas Utilities | A | B | C | | | | | |
| 6. Flat-Rate Sales to General Consumers | A | B | C | | | | | |
| 7. Flat-Rate Sales for Municipal Street Lighting | A | B | C | | | | | |
| 8. Flat-Rate Sales for Other Municipal Purposes | A | B | C | | | | | |
| 9. Prepaid Gas Sales | A | B | C | | | | | |
| 10. Commissions on Others' Gas | A | B | C | | | | | |
| 11. Consumers' Discounts Forfeited and Penalties Imposed | A | B | C | | | | | |
| House Heating | | | | | 6 | 527 | 39 | |
| Total Artificial Gas Revenues | | | | | 511 | 853 | 64 | |
| **NATURAL GAS REVENUES:** | | | | | | | | |
| 1. Metered Private Sales | | | C | | | | | |
| 2. Metered Domestic and Commercial Sales | A | B | | | 225 | 610 | 93 | |
| 3. Metered Industrial Sales | A | B | | | 5 | 853 | 01 | |
| 4. Other Metered Private Sales | A | B | | | | | | |
| 5. Metered Sales of Other Natural Gas Utilities | | | C | | | | | |
| 6. Metered Sales to Affiliated Natural Gas Utilities | A | B | | | | | | |
| 7. Metered Sales to Non-affiliated Natural Gas Utilities | A | B | | | | | | |
| 8. Metered Public Sales | A | B | C | | | 671 | 76 | |
| 9. ~~Unmetered Private Sales~~ House Heating | | | C | | | 252 | 21 | |
| 10. Unmetered Domestic and Commercial Sales | A | B | | | | | | |
| 11. Unmetered Industrial Sales | A | B | | | | | | |
| 12. Unmetered Sales for Lighting Private Streets | A | B | | | | | | |
| 13. Other Unmetered Private Sales | A | B | | | | | | |
| 14. Unmetered Sales to Other Natural Gas Utilities | | | C | | | | | |
| 15. Unmetered Sales to Affiliated Natural Gas Utilities | A | B | | | | | | |
| 16. Unmetered Sales to Non-affiliated Natural Gas Utilities | A | B | | | | | | |
| 17. Unmetered Public Sales | | | C | | | | | |
| 18. Unmetered Sales for Municipal Street Lighting | A | B | | | | | | |
| 19. Unmetered Sales for Other Municipal Uses | A | B | | | | | | |
| 20. Consumers' Discounts Forfeited and Penalties Imposed | A | B | C | | | | | |
| 21. Allowances to Consumers | A | B | C | | | | | |
| Total Natural Gas Revenues | | | | | 232 | 387 | 91 | |
| **ELECTRIC REVENUES:** | | | | | | | | |
| 1. Municipal Light and Power Revenues | | | C | | | | | |
| 2. Municipal Street Lighting—Arc | A | B | | | | | | |
| 3. Municipal Street Lighting—Incandescent | A | B | | | | | | |
| 4. Other Municipal Light and Power Revenues—Metered | A | B | | | | | | |
| 5. Other Municipal Light and Power Revenues—Flat-Rate | A | B | | | | | | |
| 6. Private Light and Power Revenues | | | C | | | | | |
| 7. Residence Light and Power Revenues—Metered | A | B | | | | | | |
| 8. Residence Light and Power Revenues—Flat-Rate | A | B | | | | | | |
| 9. Commercial Light and Power Revenues—Metered | A | B | | | | | | |
| 10. Commercial Light and Power Revenues—Flat-Rate | A | B | | | | | | |
| 11. Miscellaneous Electric Revenues | | | C | | | | | |
| 12. Sales to Other Public Utilities | A | B | | | | | | |
| 13. Other Miscellaneous Electric Revenues | A | B | | | | | | |
| Total Electric Revenues | | | | | | | | |
| Grand Total Operating Revenues | | | | | 744 | 241 | 55 | |

## OPERATING EXPENSES — ARTIFICIAL GAS
(Entire Company)



| ACCOUNT. | AMOUNT. |
|---|---|
| **I. Production Expenses:** | |
| 1. Works Superintendence, | 2 089 15 |
| 2. Works Labor, | 2 063 56 |
| 3. ~~Boiler-Fuel,~~ Holder Stock Adjustment | 55 14 |
| 4. ~~Water,~~ Duplicate Production Charges (Cr.) | 723 36 |
| 5. ~~Fuel-Under-Retorts,~~ Steam Expense Apportioned | 12 774 69 |
| 6. ~~Coal-Carbonized,~~ Generator Labor | 3 869 41 |
| 7. ~~Coal-Gas-Enrichers,~~ Purification Labor | 88 00 |
| 8. ~~Generator-Fuel,~~ Generator Fuel | 30 728 90 |
| 9. Water-Gas Oil, | |
| 10. Purifying Supplies, | |
| 11. Miscellaneous Works Expense, | 1 608 43 |
| 12. Gas Storage, | 1 320 97 |
| 13. Gas from Other Sources, | |
| 14. Works and Station Structures — Maintenance, | 612 78 |
| 15. Power-Plant Equipment — Maintenance, | 508 49 |
| 16. Gas Apparatus — Maintenance, | 3 903 81 |
| 17. Works Tools — Maintenance, | 172 17 |
| Total Production Expenses, | 59 071 93 |
| **II. Transmission and Distribution Expenses:** | |
| 18. Transmission Pumping, | 3 734 37 |
| 19. Distribution Superintendence, | 3 813 67 |
| 20. Distribution Supplies and Expenses, & Operating Labor | 2 162 81 |
| 21. Gas Meter and Installation Work, | 5 234 52 |
| 22. Work on Consumers' Premises, | 7 528 54 |
| 23. Gas Mains and Services — Maintenance, | 10 726 04 |
| 24. Gas Meters — Maintenance, | 7 363 48 |
| 25. Distribution Tools — Maintenance, & Buildings & Shop | 241 52 |
| 26. Gas Appliances — Maintenance, | 2 122 51 |
| Total Transmission and Distribution Expenses, | 42 927 46 |
| **III. Street and Park Lighting Expenses:** | |
| 27. Street Lamp Operation, | |
| 28. Street Lamps — Maintenance, | |
| Total Street and Park Lighting Expenses, | |
| **IV. Commercial Expenses:** | |
| 29. Commercial Administration, Other Commercial Labor | 13 349 87 |
| 30. ~~Advertising,~~ Meter Reading | 4 479 90 |
| 31. Other Commercial Expenses, (Supplies and Expenses) | 4 509 81 |
| Total Commercial Expenses, | 22 339 58 |
| IV A Natural Gas Purchased | 101 358 34 |

32 OPERATING EXPENSES—ARTIFICIAL GAS—(Concluded.)
(Illinois Company)

| ACCOUNT. | AMOUNT. | | |
|---|---|---|---|
| V. NEW BUSINESS EXPENSES: | | | |
| 32. New business salaries | | 206 | 53 |
| 33. New business supplies and expenses- Demonstrations | | 1782 | 67 |
| 34. Advertising supplies and expenses | | 850 | 85 |
| 35. Canvassing and soliciting | | 8430 | 99 |
| 36. Miscellaneous new business supplies and expenses | | 1023 | 87 |
| Total New Business Expenses | | 13310 | 91 |
| VI. GENERAL AND MISCELLANEOUS EXPENSES: | | | |
| 37. Salaries and expenses of general officers | | 10741 | 61 |
| 38. Salaries and expenses of general office clerks | | 8051 | 35 |
| 39. General office supplies and expenses | | 2735 | 07 |
| 40. General law expenses | | 849 | 80 |
| 41. Miscellaneous general expenses | | 18699 | 44 |
| 42. Insurance | | 3275 | 22 |
| 43. Relief department and pensions | | 892 | 64 |
| 44. Gas franchise requirements Indirect Charge to Construction (Credit) | | 2652 | 13 |
| 45. Uncollectible Consumers' Accounts | | 2753 | 43 |
| 46. Residuals expense Inventory Expense | | 410 | 21 |
| 47. General amortization | | | |
| 48. Injuries to persons and property | | 688 | 42 |
| 49. Stationery and printing | | 442 | 51 |
| 50. Store expenses Purchase Misc. Charges (Cr.) | | 1740 | 39 |
| 51. Stable expenses | | | |
| 52. Miscellaneous adjustments—Balance | | 1317 | 65 |
| 53. General structures—Maintenance | | 6 | 07 |
| Total General and Miscellaneous Expenses | | 46470 | 90 |
| Recapitulation of Operating Expenses: | | | |
| I. Production | | 59071 | 13 |
| II. Transmission and Distribution | | 42927 | 46 |
| III. Street and Park Lighting NATURAL GAS PURCHASED | | 101354 | 34 |
| IV. Commercial | | 22339 | 58 |
| V. New Business | | 13310 | 91 |
| VI. General and Miscellaneous | | 46470 | 90 |
| | | 285471 | 12 |

## NATURAL GAS—OPERATING EXPENSES
(Entire Company)

| | ACCOUNT. | CLASS. | | | AMOUNT. | | | |
|---|---|---|---|---|---|---|---|---|
| | A. PRODUCTION SYSTEM ACCOUNTS: | | | | | | | |
| | Operating Labor | | B | C | | | | |
| 350 | Superintendence | A | | | | | | |
| 351 | Gas Well and Field Line Labor | A | | | | | | |
| 352 | Field Measuring Station Labor | A | | | | | | |
| 353 | Other Labor | A | | | | | | |
| | Operating Supplies and Expenses | | B | C | | | | |
| 354 | Superintendence Supplies and Expenses | A | | | | | | |
| 355 | Gas Well and Field Line Supplies and Expenses | A | | | | | | |
| 356 | Field Measuring Station Supplies and Expenses | A | | | | | | |
| 357 | Production System Rent | A | | | | | | |
| 358 | Other Supplies and Expenses | A | | | | | | |
| 359 | Gas Well Royalties | A | B | C | | | | |
| 360 | Rental on Unoperated Leases | A | B | C | | | | |
| | Maintenance of Production System Structures | | B | C | | | | |
| 361 | Maintenance of Gas Well Structures | A | | | | | | |
| 362 | Maintenance of Other Production System Structures | A | | | | | | |
| | Maintenance of Production System Equipment | | | C | | | | |
| | Maintenance of Gas Well and Field Line Equipment | | B | | | | | |
| 363 | Maintenance of Gas Well Equipment | A | | | | | | |
| 364 | Maintenance of Field Line Equipment | A | | | | | | |
| 365 | Abandoning Wells and Changing Field Lines | A | | | | | | |
| | Maintenance of Other Production System Equipment | | B | | | | | |
| 366 | Maintenance of Field Measuring Station Equipment | A | | | | | | |
| 367 | Maintenance of Drilling and Cleaning Equipment | A | | | | | | |
| 368 | Maintenance of Other Production Equipment | A | | | | | | |
| | Total Production Expenses | | | | | | | |
| | B. NATURAL GAS PRODUCED BY OTHERS: | | | | | | | |
| 369 | Natural Gas Purchased for Resale | A | B | C | | 101 | 764 | 31 |
| 370 | Purchased Gas Expense | A | B | C | | | | |
| | Total Produced Expense | | | | | 101 | 764 | 31 |
| | C. TRANSMISSION SYSTEM ACCOUNTS: | | | | | | | |
| | Operating Labor | | B | C | | | | |
| 371 | Superintendence | A | | | | | | |
| 372 | Compressing Station Labor | A | | | | | | |
| 373 | Measuring Station Labor | A | | | | | | |
| 374 | Transmission Line Labor | A | | | | | | |
| 375 | Other Transmission System Labor | A | | | | | | |
| | Operating Supplies and Expenses | | B | C | | | | |
| 376 | Superintendence Supplies and Expenses | A | | | | | | |
| 377 | Compressing Station Supplies and Expenses | A | | | | | 91 | 74 |
| 378 | Measuring Station Supplies and Expenses | A | | | | | | |
| 379 | Transmission Line Supplies and Expenses | A | | | | | | |
| 380 | Transmission System Rent | A | | | | | | |
| 381 | Other Transmission System Supplies and Expenses | A | | | | | | |
| | Maintenance of Transmission System Structures | | B | C | | | | |
| 382 | Maintenance of Compressing Station Structures | A | | | | | | |
| 383 | Maintenance of Other Transmission System Structures | A | | | | | | |
| | Maintenance of Transmission System Equipment | | | C | | | | |
| 384 | Maintenance of Compressing Station Equipment | A | B | | | | | |
| | Maintenance of Transmission Lines | | B | | | | | |
| 385 | Maintenance of Transmission Line Equipment | A | | | | | | |
| 386 | Changing Transmission Lines | A | | | | | | |
| | Maintenance of Other Transmission System Equipment | | B | | | | | |
| 387 | Maintenance of Measuring Station Equipment | A | | | | | | |
| 388 | Maintenance of Other Transmission Equipment | A | | | | | | |
| | Total Transmission Expenses | | | | | | 91 | 74 |

## NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)

| ACCOUNT. | CLASS. | | | AMOUNT. |
|---|---|---|---|---|
| **D. DISTRIBUTION SYSTEM ACCOUNTS:** | | | | |
| Operating Labor | | B | C | |
| 389 Superintendence | A | | | 5226 60 |
| 390 Distribution Line Labor | A | | | 958 21 |
| 391 Labor Removing and Resetting Meters and House Regulators | A | | | 321 05 |
| 392 Labor Inspecting and Testing Meters and House Regulators | A | | | |
| 393 Other Meter Department Labor | A | | | |
| 394 Other Distribution System Labor | A | | | |
| Operating Supplies and Expenses | | B | C | |
| 395 Superintendence Supplies and Expenses | A | | | |
| 396 Distribution Line Supplies and Expenses | A | | | |
| 397 Meter Department Supplies and Expenses | A | | | |
| 398 ~~Distribution System Rent~~ Work on Customers Premises | A | | | 828 97 |
| 399 Other Distribution System Supplies and Expenses | A | | | 1 639 72 |
| 400 Maintenance of Distribution System Structures | A | B | C | |
| Maintenance of Distribution System Equipment | | | C | |
| Maintenance of Distribution System Lines | | B | | |
| 401 Maintenance of Distribution Line Equipment | A | | | 913 83 |
| 402 Changing Distribution Lines | A | | | |
| 403 Maintenance of Service Line Equipment | A | | | 349 [illegible] |
| Maintenance of Meters and House Regulators | | B | | |
| 404 Maintenance of Meters | A | | | 1 540 25 |
| 405 Maintenance of House Regulators | A | | | |
| Maintenance of Other Distribution System Equipment | | B | | |
| 406 Maintenance of Gas Receivers and District Regulators | A | | | |
| 407 Maintenance of Other Distribution Equipment & Gas Appliances | A | | | 1 201 63 |
| Duplicate Distribution Charges (Cr.) | | | | 45 72 |
| Total Distribution Expenses | | | | 15 429 47 |
| **E. UTILIZATION SYSTEM ACCOUNTS:** | | | | |
| Operating Labor | | B | C | |
| 408 Commercial Lighting System Labor | A | | | |
| 409 Municipal Street Lighting System Labor | A | | | |
| 410 Private Street Lighting System Labor | A | | | |
| 411 Consumer's Premises Labor | A | | | |
| Operating Supplies and Expenses | | B | C | |
| 412 Commercial Lighting System Supplies and Expenses | A | | | |
| 413 Municipal Street Lighting System Supplies and Expenses | A | | | |
| 414 Private Street Lighting System Supplies and Expenses | A | | | |
| 415 Consumers' Premises Supplies and Expenses | A | | | |
| Maintenance of Utilization System Equipment | | B | C | |
| 416 Maintenance of Commercial Lighting System | A | | | |
| 417 Maintenance of Municipal Street Lighting System | A | | | |
| 418 Maintenance of Private Street Lighting System | A | | | |
| 419 Maintenance of Other Utilization Equipment | A | | | |
| Total Utilization Expenses | | | | |
| **F. COMMERCIAL DEPARTMENT ACCOUNTS:** | | | | |
| 420 Operating Labor | A | B | C | 6 709 17 |
| 421 Operating Supplies and Expenses | A | B | C | 3 907 63 |
| Total Commercial Expenses | | | | 10 616 80 |
| **G. NEW BUSINESS DEPARTMENT ACCOUNTS:** | | | | |
| New Business Salaries and Commissions | | B | C | |
| 422 New Business Salaries | A | | | 708 47 |
| 423 ~~New Business Commissions~~ Demonstrations | A | | | 208 09 |
| 424 New Business Supplies and Expenses | A | B | C | 384 [illegible] |
| 425 ~~New Business Piping Labor~~ Advertising | A | B | C | 875 31 |
| 426 ~~New Business Piping Supplies and Expenses~~ Canvassing & Solicitating | A | B | C | 1 201 08 |
| Total New Business Expenses | | | | 3 492 75 |

## NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)



| ACCOUNT. | CLASS. | | | AMOUNT. | | |
|---|---|---|---|---|---|---|
| **H. GENERAL ADMINISTRATIVE ACCOUNTS:** | | | | | | |
| General Administrative Salaries | | | | | | |
| 427 Salaries of General Officers | | B | C | | | |
| 428 Salaries of General Office Clerks | A | | | | 4 841 | 75 |
| General Administrative Supplies and Expenses | A | | | | 3 638 | 25 |
| General Administrative Supplies | | | C | | | |
| 429 General Office Stationery and Printing | | B | | | | |
| 430 Other General Office Supplies | A | | | | 199 | 17 |
| General Officers' and General Office Clerks' Expenses | A | | | | 1 249 | 33 |
| 431 General Officers' Expenses | | B | | | | |
| 432 General Office Clerks' Expenses | A | | | | | |
| Other General Administrative Expenses | A | | | | | |
| 433 General Law Expenses | | B | | | | |
| 434 General Office Rent | A | | | | 430 | 20 |
| 435 Other General Office Expenses | A | | | | | |
| 436 Maintenance of General Office Structures | A | | | | | |
| 437 Maintenance of General Office Equipment | A | B | C | | | |
| Total Administrative Expenses | A | B | C | | | |
| | | | | | 10 357 | 76 |
| **I. OTHER GENERAL EXPENSE ACCOUNTS:** | | | | | | |
| General Labor | | | | | | |
| 438 Store Labor | | | C | | | |
| Stable and Garage Labor | A | B | | | | |
| 439 Stable Labor | | B | | | | |
| 440 Garage Labor | A | | | | | |
| Shop and Laboratory Labor | A | | | | | |
| 441 ~~Shop Labor~~ Laboratory Expense | | B | | | | |
| 442 Laboratory Labor | A | | | | 184 | 69 |
| 443 Telephone and Telegraph System Labor | A | | | | | |
| General Supplies and Expenses | A | B | | | | |
| 444 Store Supplies and Expenses | | | C | | | |
| Stable and Garage Supplies and Expenses | A | B | | | | |
| 445 Stable Supplies and Expenses | | B | | | | |
| 446 Garage Supplies and Expenses | A | | | | | |
| Shop and Laboratory Supplies and Expenses | A | | | | | |
| 447 Shop Supplies and Expenses | | B | | | | |
| 448 Laboratory Supplies and Expenses | A | | | | | |
| 449 Telephone and Telegraph System Supplies and Expenses | A | | | | | |
| 450 Natural Gas Franchise Requirements | A | B | | | | |
| 451 (See Gross Income Deduction Account No. 609A) | A | B | C | | | |
| 452 Uncollectible Consumers' Accounts | | | | | | |
| Other General Expenses | A | B | C | | 1 297 | 56 |
| 453 Public Utilities Commission Expense | | | C | | | |
| Insurance Relief and Pension Expense | A | B | | | 8 980 | 50 |
| 454 Injuries and Damages | | B | | | | |
| 455 Other Insurance | A | | | | 311 | 58 |
| 456 Relief and Pensions | A | | | | 896 | 19 |
| 457 Other General Expense | A | | | | 400 | 58 |
| Amount Carried Forward | A | B | | | 6 630 | 99 |
| | | | | | 18 701 | 99 |

## NATURAL GAS—OPERATING EXPENSES—(Concluded)
(Entire Company)

| | ACCOUNT. | CLASS. | | | AMOUNT. |
|---|---|---|---|---|---|
| | Amount Brought Forward | | | | 18 901 99 |
| | | | | C | |
| | General Adjustments | | | | |
| 438 | Inventory Adjustments | A | B | | 625 58 |
| 439 | Discount on Materials and Supplies Indirect Charges to Construction (Cr.) | A | B | | 829 65 |
| 440 | Utility's Natural Gas Used in Operations Duplicate Charge (Cr.) | A | B | | 101 461 |
| 441 | Free Municipal Natural Gas Service | A | B | | |
| | | | B | C | |
| | Maintenance of General Structures | | | | |
| 442 | Maintenance of General Store Structures | A | | | |
| 443 | Maintenance of General Stable Structures | A | | | |
| 444 | Maintenance of General Garage Structures | A | | | |
| 445 | Maintenance of General Shop Structures | A | | | |
| 446 | Maintenance of General Laboratory Structures | A | | | |
| 447 | Maintenance of other General Structures | | B | C | |
| | Maintenance of General Equipment | | | | |
| 448 | Maintenance of General Store Equipment | A | | | |
| 449 | Maintenance of General Stable Equipment | A | | | |
| 450 | Maintenance of General Garage Equipment | A | | | |
| 451 | Maintenance of General Shop Equipment | A | | | |
| 452 | Maintenance of General Laboratory Equipment | A | | | |
| 453 | Maintenance of General Telephone and Telegraph System | A | | | |
| 454 | Maintenance of other General Equipment | A | B | C | 53 659 00 |
| 455 | Depreciation | A | B | C | |
| 456 | Extraordinary Depreciation | A | B | C | 11 708 00 |
| 457 | Amortization of Franchises, Patent Rights and Licenses Pipe Line | A | B | C | |
| 458 | Amortization of Natural Gas Rights and Leases | A | B | C | |
| 459 | Joint Operating Expenses Transferred | | | | |
| | Total Other General Expenses | | | | 82 933 11 |
| | RECAPITULATION OF OPERATING EXPENSES: | | | | |
| | A. Production Expenses | A | B | C | |
| | B. Natural Gas Produced by Others | A | B | C | 101 769 31 |
| | C. Transmission Expenses | A | B | C | 81 76 |
| | D. Distribution Expenses | A | B | C | 13 429 47 |
| | E. Utilization Expenses | A | B | C | |
| | F. Commercial Expenses | A | B | C | 10 616 80 |
| | G. New Business Expenses | A | B | C | 3 472 75 |
| | H. Administrative Expenses | A | B | C | 10 367 76 |
| | I. Other General Expenses | A | B | C | 82 933 11 |
| | Grand Total Operating Expenses | | | | 222 646 96 |

## ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—NON-OPERATING REVENUE AND EXPENSE ACCOUNTS

| ACCOUNT. | CLASS. | AMOUNT. | REMARKS. |
|---|---|---|---|
| **NON-OPERATING REVENUE ACCOUNTS:** | | | |
| 1. Merchandise Sales | A B C | 51208 58 | |
| 2. Jobbing Work Revenue | A B C | 4059 84 | |
| 3. Rents from Lease of Public Utility Properties—Page 42 | A B C | 195 00 | |
| 4. Rents from Lease of Other Properties—Page 42 | A B C | | |
| 5. Joint Facility Rent | A B C | | |
| 6. Interest from Investment Securities | A B C | | |
| 7. Interest from Other Sources | A B C | 442 55 | |
| 8. Dividends on Investment Securities | A B C | | |
| 9. Sinking Fund Revenues | A B C | | |
| 10. Depreciation Fund Revenues | A B C | | |
| 11. Insurance and Other Reserve Fund Revenues | A B C | | |
| 12. Profit from Operations of Others—Page 42 | A B C | | |
| 13. Sub-Utility Revenues—Page 42 | A B C | | |
| 14. Oil Revenue | A B C | | |
| 15. Gasoline Revenue | A B C | | |
| 16. Other Non-Operating Revenues | A B C | 4047 16 | |
| Total Revenues (Carry to page 29) | | 64953 13 | |
| **NON-OPERATING EXPENSE ACCOUNTS:** | | | |
| 1. Merchandise Sales Expense | A B C | 39732 90 | |
| 2. Jobbing Work Expense | A B C | 3099 56 | |
| 3. Lease of Public Utility Properties Expense | A B C | | |
| 4. Lease of Other Properties Expense | A B C | | |
| 5. Interest Expense | A B C | | |
| 6. Dividend Expense | A B C | | |
| 7. Expense of Procuring Profits from Operations of Others | A B C | | |
| 8. Sub-Utility Expense—Page 42 | A B C | | |
| 9. Non-Operating Taxes | A B C | | |
| 10. Uncollectible Non-Operating Revenues | A B C | | |
| 11. Oil Expense | A B C | | |
| 12. Gasoline Expense | A B C | | |
| 13. Other Non-Operating Expense | A B C | | |
| Total Expenses (Carry to page 29) | | 42832 46 | |

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## SUB-UTILITY AND OUTSIDE OPERATIONS

If any Public Utility service is conducted other than that of Artificial Gas, Natural Gas or Electric Light, show Revenues and Expenses of such Sub-Utility hereunder.

| CLASS OF OPERATION. | GROSS REVENUE | EXPENSE | NET REVENUE OR DEFICIT |
|---|---|---|---|
| None | | | |
| TOTAL. | | | |

## RENT REVENUES FROM LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

| DESCRIPTION OF PROPERTY | | Name of person from whom property is leased. | Rent accrued during year. |
|---|---|---|---|
| Name. | Location. | | |
| Property purchased for Office Site | 319-10 Market St. Lima, Ohio | Jacob Piper (leased only during 1st Quarter, 1929) | 195 00 |
| | TOTAL. | | 195 00 |

## PROFITS AND LOSSES FROM OPERATIONS OF OTHERS

| Description of Property Operated. | Location of Property. | Name of operator. | Accrued to Respondent. | |
|---|---|---|---|---|
| | | | Profit. | Loss. |
| None | | | | |
| | | TOTAL. | | |

## TAXES AND ASSESSMENTS



| KIND OF TAX | Taxes assessed or accrued during year. | | Taxes paid during year. | |
|---|---|---|---|---|
| | Ohio. | Indiana. | Ohio. | Indiana. |
| On the Value of Real and Personal Property Used in Operation | 33,427.28 | 33,427.28 | 15,171.91 | 15,171.91 |
| On Real Property Not Used in Operation | 891.25 | 891.25 | 513.60 | 513.60 |
| On Gross Receipts—Excise Tax | 10,704.30 | 10,704.30 | 10,704.30 | 10,704.30 |
| Public Utilities Commission Maintenance | 408.45 | 408.45 | 408.45 | 408.45 |
| Domestic Corporation | | | | |
| Franchise | | | | |
| Internal Revenue, U. S. Government | | | | |
| Federal Income and Excess Profits | 13,125.08 | 13,125.08 | 7,020.99 | 7,020.99 |
| Federal on Bond Coupon | | | | |
| Federal Capital Stock | | | | |
| Miscellaneous (Specify) | | | | |
| Total | 58,656.36 | 58,656.36 | 34,819.25 | 34,819.25 |

REMARKS

## RENT DEDUCTIONS FOR LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

| Description of Property. NAME. | Name of lessor or rentalessor. | Total rent accrued during year. | Classification of Rent. Guaranteed interest on bonds. | Guaranteed dividends on stocks. | Cash. |
|---|---|---|---|---|---|
| | None | | | | |
| | Total. | | | | |

## ABSTRACTS OF LEASEHOLD CONTRACTS.

Give brief abstracts of the terms and conditions of the leases under which the respondent holds the properties above named, showing particularly (1) the date of the lease, (2) the chain or title and dates of transfers connecting the original lessee with the respondent in case of assignment or subletting, (3) the basis on which the amount of the annual rent is determined, and (4) the date when the lease is to terminate, or, if such date has not yet been determined, the provisions governing its determination.

In lieu of the abstracts here called for, the respondent may file copies of lease agreements and give specific references to copies heretofore filed with the Commission.

None

## FRANCHISES ACQUIRED DURING THE YEAR.

| Name of Original Grantor. | Date of grant. | Term in years. | Territory covered. | Operations covered. | Date of completion by respondent. | Date of authorization. | Actual money cost to respondent. | Amount at which carried on Balance Sheet |
|---|---|---|---|---|---|---|---|---|
| | | None | | | | | | |

If the respondent did not acquire any of the above franchises directly from the original grantor thereof, show the chain of title connecting the original grantor and the respondent.

## APPROPRIATIONS OF INCOME AND SURPLUS TO SINKING AND DEPRECIATION RESERVE FUNDS

| Name and purpose of sinking or depreciation fund. | Amount charged to "Income" | Amount charged to "Corporate surplus" |
|---|---|---|
| None | | |
| TOTAL | | |

## APPROPRIATIONS OF INCOME AND SURPLUS FOR INVESTMENT IN FIXED CAPITAL

| Name and purpose of appropriation. | Amount charged to "Income" | Amount charged to "Corporate surplus" |
|---|---|---|
| None | | |
| TOTAL | | |

## OTHER RESERVE FUND APPROPRIATIONS OF INCOME AND SURPLUS

| Purpose of appropriation. | Amount charged to "Income" | Amount charged to "Corporate surplus" |
|---|---|---|
| None | | |
| TOTAL | | |

Here present statements as follows: 1. All Extensions of the Respondent's Business with Other Companies. 2. All Companies from which the Respondent's Business was Withdrawn. 3. All important Purchases of Equipment for new lines. 4. All other important Physical Changes. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Funded Debt issued. 8. All changes in the respondent's holdings of Stocks and Funded Debt. 9. All other important Financial Changes.

None

## CONTRACTS, AGREEMENTS, ETC., WITHIN OHIO.

Here give a concise statement of all Contracts, Agreements, etc., with other Companies or persons, concerning the conduct of the business of the respondent, which became effective during the year covered by this report.

None

## GENERAL INFORMATION—ARTIFICIAL GAS COMPANIES

*1. If any gas purchased from other gas companies during year, state:

| Name of Company. | Number Cubic Feet | Price per M. | Amount Paid. |
|---|---|---|---|
| The Ohio Fuel Gas Co. | 184 287 686 | 55¢ | $101,358.34 |

2. Number cubic feet gas produced during year: (a) Ohio, 267,541,000

(b) Entire Company,

3. Number cubic feet gas distributed during year in Ohio:

| | |
|---|---|
| (a) Domestic and Commercial Sales, | 368 729 600 |
| (b) Sales to factories and industries, | 28 035 400 |
| (c) Public sales (municipalities, etc.) | 2 236 500 |
| (d) Miscellaneous gas sales, (House Heating) | 9 086 000 |
| (e) Sales to other gas companies, | |
| used by company | 4 185 300 |
| Total cubic feet distributed | 412 272 800 |

*4. If any gas sold to other gas utility companies during year, state:

| Name of Company. | Number Cubic Feet. | Price per M. | Amount Received. |
|---|---|---|---|
| None | | | |

5. Number cubic feet gas brought into Ohio, None

6. Number cubic feet gas sold outside of Ohio, None

7. State kind of gas supplied and process of manufacture, Mixed Gas (Natural & Water Gas) distributed to customers in Lima. Straight natural gas delivered to customers in Wapakoneta, St. Marys, Celina and Kenton.

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 4.

## GENERAL INFORMATION—NATURAL GAS COMPANIES

1. Number of gas wells owned: (a) Ohio, None
   (b) Entire Company.
2. Number of gas wells leased and names of lessors, None
3. Number of acres under lease in Ohio at close of year, None
4. If any gas purchased from other companies during year, state:

| Name of Company. | Number Cubic Feet. | Price per M. | Amount Paid |
|---|---|---|---|
| The Ohio Fuel Gas Co. | 185035 114 | 55¢ | $101769.31 |

5. Number cubic feet gas produced during year: (a) Ohio,
   (b) Entire Company, None
6. Number cubic feet gas distributed during year in Ohio:

| | | |
|---|---|---|
| (a) Domestic and commercial sales, | | 154 413 900 |
| (b) Sales to factories and industries, | | 5 721 300 |
| (c) Public sales (municipalities, etc.), | | 613 200 |
| (d) Miscellaneous gas sales, | (Home Heating) | 240 300 |
| (e) Sales to other gas companies, | Used by company | 484 600 |
| Total cubic feet distributed, | | 161 473 300 |

7. If any gas sold to other gas utility companies during year, state:

| Name of Company. | Number Cubic Feet. | Price per M. | Amount Received. |
|---|---|---|---|
| | None | | |

8. Number cubic feet gas brought into Ohio, None
9. Number cubic feet gas sold outside of Ohio, None
10. Number of gallons of gasoline produced during year, None
11. Number new wells drilled during year:

| | Productive | Non-Productive | Total. |
|---|---|---|---|
| (a) Ohio, | None | | |
| (b) Entire Company, | | | |

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 4.

## GENERAL INFORMATION—ELECTRIC LIGHT COMPANIES

1. Number of Stations:

2. Capacity of each station in K. W. hours:

(a) A. C.

(b) D. C.

Total capacity

3. Transmission voltage,

4. Distribution voltage,

*5. If any current purchased from other companies during year, state:

| Name of Company. | Number K. W. hours. | Price per K. W. hour. | Amount paid. |
|---|---|---|---|
| | | | |

6. Number of K. W. hours produced during year. (a) Ohio

(b) Entire Company

7. Number of K. W. hours distributed during year in Ohio:

(a) Domestic and commercial sales,

(b) Sales to factories and industries,

(c) Public sales (municipalities, etc.)

(d) Miscellaneous electric sales,

(e) Sales to other electric companies,

Total K. W. hours distributed,

*8. If any current sold to other electric utility companies during year, state:

| Name of Company. | Number K. W. hours. | Price per K. W. hour. | Amount Received. |
|---|---|---|---|
| | | | |

9. Number of meter customers,

10. Number of Flat Rate customers,

11. Is current furnished for light during day time?

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

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## STATEMENT OF INTRASTATE GROSS EARNINGS FOR OHIO FOR THE YEAR COVERED BY THIS REPORT

("Intrastate" means from one point in Ohio to another point in Ohio, or wholly within Ohio.)

Attention is called to Section 606 of the General Code of Ohio, which reads as follows:

SEC. 606. For the purpose of maintaining the department of public utilities commission of Ohio, including the payment of salaries, traveling expenses, printing, rent, light, heat, water, telephones and all other overhead expenses, and the exercise of police supervision of railroads and public utilities of the state by it, a sum not exceeding two hundred thousand dollars each year shall be apportioned among and assessed upon the railroads and public utilities within the state, by the commission, in proportion to the intrastate gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are made.

On or before the first day of August next following, the commission shall certify to the auditor of state the amount of such assessment appropriated by it to each railroad and public utility and he shall certify such amount to the treasurer of state, who shall collect and pay the same into the state treasury to the credit of a special fund for the maintenance of the department of such public utilities commission.

TO THE PUBLIC UTILITIES COMMISSION OF OHIO:

For the uses and purposes designated in Section 606 of the General Code of Ohio:

We, the undersigned, Emmett R. Curtis, President,

and F. L. Pringle Asst. Secretary,

of West Ohio Gas Company
(Full name of respondent.)

on our oath do severally say that the amount of Intrastate Gross Earnings for the State of Ohio, for the year covered by this report, is $ $11,194.00; that the same has been prepared under our direction from the original books, papers, and records of said company; that we have carefully examined the same, and declare the same to be a complete and correct statement in respect to each and every matter which should be included in Intrastate Gross Earnings, during the period for which said return is made, to the best of our knowledge, information and belief.

Emmett R. Curtis
*President.*

F. L. Pringle
Asst. *Secretary.*

SUBSCRIBED AND SWORN TO before me this 1st day of March, 19__

Katheryn M. Cook
Notary Public
Allen County, Ohio.

Notary Seal

Corporate seal

## VERIFICATION.

The foregoing report must be verified by the oath of the officer having control of the accounting of the respondent. It should be verified, also, by the oath of the president or other chief officer of the respondent, unless the respondent states on the last preceding page of this report that such chief officer has no control over the accounting of the respondent. The oath required may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

### OATH.

(To be made by the officer having control of the accounting of the respondent.)

State of Ohio
County of Allen } ss.

F. L. Bringle makes oath and says that he is Asst Secy and Asst Treasurer
(Insert here the name of the affiant.) (Insert here the official title of the affiant.)

of West Ohio Gas Co.
(Insert here the exact legal title or name of the respondent.)

that it is his duty to have supervision over the books of account of the respondent and to control the manner in which such books are kept; that he knows that such books have, during the period covered by the foregoing report, been kept in good faith in accordance with the accounting and other orders of the Public Utilities Commission, effective during the said period; that he has carefully examined the said report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of account and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent during the period of time from and including Jan. 1st, 1929, to and including Dec. 31st, 1929

F. L. Bringle
(Signature of affiant.)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above named, this first day of March, 1930

My commission expires April 9, 1932 [Use an impression seal]

Kathryn W Cook
(Signature of officer authorized to administer oaths.)

### SUPPLEMENTAL OATH.

(By the president or other chief officer of the respondent.)

State of Ohio
County of Allen } ss.

E. K. Curtin makes oath and says that he is President
(Insert here the name of the affiant.) (Insert here the official title of the affiant.)

of West Ohio Gas Company
(Insert here the exact legal title or name of the respondent.)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above named respondent during the period of time from and including Jan. 1st, 1929, to and including Dec. 31st, 1929

Emmett K. Curtin
(Signature of affiant.)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above named, this first day of March, 1930

My commission expires April 9, 1932 [Use an impression seal]

Kathryn W Cook
(Signature of officer authorized to administer oaths.)

corporate seal

notary seal

Commission Exhibit #3
of March 8, 1933.

# ANNUAL REPORT

OF

West Ohio Gas Company

Lima, Ohio - Kenton District

TO

# The Public Utilities Commission of Ohio

For the Year Ending December 31,
1930

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1ST

# INSTRUCTIONS

This form of annual report must be filled out and returned to the office of THE PUBLIC UTILITIES COMMISSION OF OHIO, Columbus, Ohio, by March 1st next.

Heretofore, it has been customary to print on the left hand pages instructions for answering questions covered by the opposite page of the report; but the Commission is of the opinion that this is not necessary, as returns often indicate that instructions have not been read or at least have not been followed, and they are therefore omitted from this form. The respondent, however, is urged to ask for instructions should there be any item in the report that is not fully understood and upon such request any information asked for will be furnished promptly.

This report form calls for Artificial Gas, Natural Gas and Electric Light operations, and any company furnishing more than one of these classes of service will report such information as is applicable for each class.

If it is necessary or desirable to insert additional statements, typewritten or other, in this report, care should be taken that they be legibly made on paper of a durable sort and, as a rule of a size not exceeding that of a page. Inserted sheets should be securely attached, preferably at inner margin.

All entries should be made in a permanent black ink, except those of a contrary or unusual character (like deficits for example), which should be made in a permanent red ink.

Each respondent should make its annual report to this Commission in duplicate, retaining one copy in its files for reference in case correspondence with regard to such report becomes necessary. For this reason two copies of the accompanying form are sent to each company concerned.

The word "respondent," whenever used in this report, means the company in whose behalf the report is made.

Attention is called to the following sections of the General Code of Ohio:

Section 614-2. Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation wherever organized or incorporated:

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating, or power purposes to consumers within this state, is a natural gas company;

Section 614-48. Every public utility shall file with the Commission, at such times and in such form as it may prescribe, an annual report, duly verified, covering the yearly period fixed by the Commission. The Commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form therefor. If any such report is defective or erroneous, the Commission may order the same to be amended within a prescribed time. Such annual reports shall be preserved in the office of the Commission. The Commission may at any time, require specific answers to questions upon which it may desire information.

Section 614-65. Whoever being an officer, agent or employe in an official capacity, of a public utility or railroad defined in this act, knowingly violates any provisions of this act, or wilfully fails, omits, or neglects to obey, observe or comply with any lawful order or direction of the Commission made with respect to any public utility or railroad shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than two years, or both, and each day's continuance of such failure, omission or neglect shall constitute a separate offense.

**THE INFORMATION CALLED FOR BY EACH PAGE OF THIS REPORT, UNLESS OTHERWISE INDICATED, IS TO BE REPORTED FOR THE ENTIRE COMPANY AND NOT FOR THE STATE OF OHIO ONLY**

**DO NOT FAIL TO MAKE RETURNS OF INTRASTATE GROSS EARNINGS ON PAGE 50**

# ANNUAL REPORT

OF

WEST OHIO GAS COMPANY

LIMA, OHIO

TO

# The Public Utilities Commission of Ohio

For the Year Ending December 31,
1930

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1st

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## HISTORY

1. Exact name of company making this report. West Ohio Gas Company.

2. Date of organization. Oct. 24, 1924

3. Under the laws of what Government, State or Territory organized? If more than one name all. Give reference to such statute and amendments thereof.

State of Ohio

4. If a consolidated or merger company name all constituent and all merged companies. Give reference to charters or general laws governing each, and all amendments of name.

Property of the following companies purchased by respondent in Dec. 1924:

The Lima Natural Gas Company. The Wapakoneta Natural Gas Company
The Lima Gas Light Company. The St. Marys Gas Company.
The Celina Gas Company

5. Date and authority for each consolidation and each merger.

On authority of orders #3229 and #3230 issued by the Public Utilities Commission of Ohio dated Nov. 26th, 1924.

6. State whether respondent is a corporation, a joint stock association, a firm or partnership, or an individual.

Corporation

7. If a reorganized company, give name of original corporation, refer to laws under which it was organized and the occasion for the reorganization.

8. State whether or not, the respondent during the year conducted any part of its business under a name, or names, other than that shown, in response to inquiry No. 1, above. If so, give full particulars.

No

9. Where is the plant or plants located? Lima, Cridersville, Wapakoneta, St Marys, Celina, Kenton, Columbus Grove, Ottawa, Fayette and Bluffton, Ohio.

10. Name below all classes of public service furnished by the respondent.

Production and distribution of gas for domestic, commercial and industrial purposes in the above mentioned districts.

## DIRECTORS.

| NAME. | POST-OFFICE ADDRESS. | DATE OF EXPIRATION OF TERM. |
|---|---|---|
| Samuel Insull | 122 So. Michigan Ave. Chicago, Ill. | |
| Samuel Insull, Jr. | Chicago, Ill | One year from March 1st, 1920, or until successor is elected. |
| Emmett R. Curtin | Lima, Ohio. | |
| Emmett R. Curtin, Jr. | " " | |
| F. L. Pringle | " " | |
| H. A. Bentley | " " | |
| S. Fo. Mulholland | Ft. Wayne, Ind. | |

## PRINCIPAL OFFICERS.

| TITLE | NAME | OFFICIAL ADDRESS. |
|---|---|---|
| Chairman of the Board, | Samuel Insull | Chicago, Ill. |
| President, | Emmett R. Curtin | Lima, Ohio. |
| First Vice-President, | Samuel Insull, Jr. | Chicago, Ill. |
| Second Vice-President, | | |
| Third Vice-President, | | |
| Secretary, | B.P. Shearon | Chicago, Ill |
| Treasurer, | F. F. Mitchell | " " |
| General Solicitor, | | |
| Attorney, or General Counsel, | H.A Bentley | Lima, Ohio. |
| Comptroller, | W. A Sumer | Chicago, Ill. |
| Assistant Comptroller, | | |
| General Auditor, | | |
| Assistant General Auditor, | | |
| General Manager, | Emmett R. Curtin | Lima, Ohio. |
| Chief Engineer, | | |
| Superintendent, | | |
| Managing Agent for the Company in Ohio, | | |

Location of principal office, at Lima, County of Allen
and State of Ohio.

Officer to whom correspondence concerning this report should be addressed:

| NAME. | TITLE. | ADDRESS. |
|---|---|---|
| Emmett R. Curtin | President | 319 W. Market St Lima, Ohio. |

## FACTS PERTAINING TO CONTROL OF RESPONDENT.

1. Date of last meeting of stockholders for election of directors. March 11th, 1930
2. Date of last closing of stock books before end of year for which this report is made. Books do not close
3. Total number of stockholders of record at the date required in answer to Question 2.
4. Has each share of stock one vote? Each share of Common Stock has one vote.

   If otherwise, explain voting rights.

5. Has any issue of securities contingent voting rights? Yes.

   If so, explain character of such rights. Preferred stock is entitled to vote in event of default in 4 Quarterly dividends
6. Has any issue of securities special privileges in the election of directors? Yes

   If so, explain character of such privileges. Common stockholders elect directors.

7. Did any individual, association, corporation or corporations, control the respondent at close of year? Yes

   If control was so held, state:

   (a) The form of control, whether sole or joint;

   Sole

   (b) The name of the controlling corporation or corporations;

   Midland Utilities Company

   (c) The manner in which control was established;

   Stock control

   (d) The extent of control; Ownsall common stock except Directors qualifying shares.

   (e) Whether control was direct or indirect;

   Direct

   (f) The name of the intermediary through which control, if indirect, was established.

8. Did any individual, association, or corporation, as trustee, control, the respondent at close of year? No

   If control was so held, state:

   (a) The name of the trustee;

   (b) The name of the beneficiary or beneficiaries for whom the trust was maintained.

## CORPORATIONS CONTROLLED BY RESPONDENT

| NAME. | CONTROL. | | | | | |
|---|---|---|---|---|---|---|
| | SOLE OR JOINT. | HOW ESTABLISHED. | EXTENT. | DIRECT OR INDIRECT | IF INDIRECT, NAME OF INTERMEDIARY THROUGH WHICH CONTROL IS ESTABLISHED. | OTHER PARTIES TO AGREEMENT FOR JOINT CONTROL. |
| ACTIVE CORPORATIONS: | | None | | | | |
| INACTIVE CORPORATIONS: | | None | | | | |

## 6 SPECIAL TRAFFIC AGREEMENTS AND ARRANGEMENTS WITHIN THE STATE OF OHIO.

Give a list showing every agreement, arrangement, or understanding in force at any time during the year, through which agreement, arrangement, or understanding the respondent became obligated or privileged to receive from, or supply to, other corporations or persons, gas, electric energy or property, or to receive or render any service of any class which respondent is obligable or privileged to receive or render, the terms of which agreement differ in any regard whatever from those upon which any person is of common right entitled or bound to supply to, or to receive from, the respondent, gas, electric energy or property, or any service of any kind which respondent is obligable to receive or render. Show for each agreement: (1) the names and addresses of the parties thereto, (2) the date when it became effective, (3) the date when according to its terms it will expire, (4) the consideration upon which it is based, and (5) the amount of business done under it during the year. If there was no such agreement, state that fact.

## SHOW ARTIFICIAL GAS CUSTOMERS ON THIS PAGE

7

The respondent will show on this page the names of cities or villages in which it supplies artifical gas, with number of customers in each.

If any public utility product other than that designated by pages 6, 7 and 8, is supplied, name such product on this page, giving names of cities or villages supplied, with number of customers in each.

| CITY OR TOWN. | NUMBER OF CUSTOMERS. | CITY OR TOWN | NUMBER OF CUSTOMERS. |
|---|---|---|---|
| | | BROUGHT FORWARD, | |
| | | Lima. | 9,832 |
| | | Columbus Grove | 79 |
| | | Ottawa. | 110 |
| | | Leipsic | 63 |
| | | Bluffton. | 65 |
| FORWARD, | | TOTAL. | 10,149 |

8

## SHOW NATURAL GAS CUSTOMERS ON THIS PAGE.

The respondent will show on this page the names of cities or villages in which it supplies natural gas, with number of customers in each.
If consumers are supplied outside of cities and villages in rural territory, give name of township with number of customers.

| CITY OR TOWN. | NUMBER OF CUSTOMERS. | CITY OR TOWN. | NUMBER OF CUSTOMERS. |
|---|---|---|---|
| | | BROUGHT FORWARD. | |
| | | Wapakoneta. | 1438 |
| | | St. Marys | 1365 |
| | | Celina | 1094 |
| | | Kenton. | 1870 |
| FORWARD. | | TOTAL. | 5,767 |

# GENERAL BALANCE SHEET



## ASSET ACCOUNTS

| ACCOUNT. | ITEM. | TOTAL. |
|---|---|---|
| I. FIXED CAPITAL ACCOUNTS: | | |
| Fixed Capital—Pages 13, 16, 18 | 3 904 412 54 | |
| Cost of Fixed Capital purchased | | |
| Construction work in progress | | |
| II. INVESTMENT ACCOUNTS: | | |
| Investment Securities—Page 19. | | |
| Property Used in Other Public Service—Page 19. | 50 00 | |
| Advances to Affiliated Companies for Construction, Equipment, or Additions and Betterments—Page 19. | | |
| Other Investments—Page 19. | | |
| III. REACQUIRED SECURITIES ACCOUNTS: | | |
| Reacquired Capital Stock | | |
| Reacquired Bonds | 29 000 00 | |
| IV. FUND ACCOUNTS: | | |
| Sinking Fund Assets—Page 20 | | |
| Depreciation Fund Assets—Page 20 | | |
| Insurance and Other Reserve Fund Assets—Page 20 | | |
| V. SPECIAL DEPOSIT ACCOUNTS: | | |
| Interest Special Deposits—Page 21 | | |
| Dividend Special Deposits—Page 21 | | |
| Other Special Deposits—Page 21 | 800 00 | |
| VI. CURRENT ASSET ACCOUNTS: | | |
| Cash | 15 976 64 | |
| Notes Receivable—Page 21 | | |
| Accounts Receivable from Consumers | 46 442 34 | |
| Accounts Receivable from Affiliated Companies—Page 21 | 1 536 75 | |
| Other Accounts Receivable | 25 059 84 | |
| Matured Interest and Rents Receivable | | |
| Materials and Supplies | 42 054 85 | |
| Subscriptions to Capital Stock | | |
| Other Current Assets | 15 000 00 | |
| VII. ACCRUED ASSET ACCOUNT: | | |
| Unmatured Interest and Rents Receivable | | |
| VIII. PREPAID ACCOUNTS: | | |
| Prepaid Insurance | 811 54 | |
| Prepaid Interest | | |
| Prepaid Taxes | | |
| Other Prepaid Accounts | | |
| IX. DEFERRED CHARGE ACCOUNTS: | | |
| Discount on Capital Stock | 90 518 25 | |
| Unamortized Debt Discount and Expense | 43 412 72 | |
| Property Abandonment—Page 22 | | |
| Extraordinary Casualties | | |
| Non-Productive Well Drilling Expense | | |
| Preliminary Survey and Investigation Charges | | |
| Other Deferred Charges | 41 108 87 | |
| Grand Total | $ 4 323 495 24 | |

## LIABILITY ACCOUNTS

| ACCOUNT. | ITEM. | TOTAL. |
|---|---|---|
| I. CORPORATE CAPITAL LIABILITY ACCOUNTS: | | |
| Capital Stock—Page 23 | 2,316,381.50 | |
| Installments Paid on Capital Stock Subscriptions | | |
| Stock Liability for Conversion of Securities | | |
| Premium on Capital Stock | | |
| II. NON-CORPORATE PROPRIETORSHIP ACCOUNTS: | | |
| Sole Proprietorship | | |
| Partnership | | |
| III. FUNDED DEBT ACCOUNTS—Page 23. | | |
| Bonds | 1,000,000.00 | |
| Real Estate Mortgages | | |
| Advances from Affiliated Companies for Construction | | |
| Equipment, or Additions and Betterments | | |
| Other Funded Debt | | |
| IV. CURRENT LIABILITY ACCOUNTS: | | |
| Receiver's Certificates | | |
| Judgments | | |
| Workmen's Compensation | | |
| Notes Payable—Page 25 | 400,000.00 | |
| Consumer's Deposits | 49,389.09 | |
| Accounts Payable to Affiliated Companies—Page 25 | 8,452.76 | |
| Other Accounts Payable | 50,067.68 | |
| Matured Funded Debt—Page 25 | | |
| Matured Interest on Funded Debt | | |
| Matured Interest on Unfunded Debt | | |
| Dividends Payable | | |
| Service Billed in Advance | | |
| Capital Stock Subscribed | | |
| Other Current Liabilities | 722.85 | |
| Purchase Contracts | 5,000.00 | |
| V. ACCRUED LIABILITY ACCOUNTS: | | |
| Unmatured Interest Accrued on Funded Debt | 5,000.00 | |
| Unmatured Interest Accrued on Unfunded Debt | 166.67 | |
| Taxes Accrued | | |
| ~~Other Accrued Liabilities~~ | 51,506.55 | |
| VI. DEFERRED CREDIT ACCOUNTS: | | |
| Unamortized Premium on Debt | | |
| Other Deferred Credits | | |
| Public Improvement Contributions | 1,952.93 | |
| VII. RESERVE ACCOUNTS: | | |
| Insurance Reserve—Page 26 | | |
| Injuries and Damages Reserve—Page 26 | 2,051.04 | |
| Uncollectible Consumers' Accounts Reserve—Page 26 | 4,212.82 | |
| Depreciation of Structures and Equipment Reserve—Page 26 | 236,884.52 | |
| Amortization of Other Capital Reserve—Page 26 | 75,811.54 | |
| Other Reserves—Page 26 | | |
| Contributions for Extensions | 864.31 | |
| VIII. APPROPRIATED SURPLUS ACCOUNTS: | | |
| Surplus Invested in Fixed Capital | | |
| Funded Debt Retired through Surplus | | |
| Surplus Reserved for Sinking Funds | | |
| Other Surplus Reserves | | |
| IX. UNAPPROPRIATED SURPLUS ACCOUNT: | | |
| Corporate Surplus Unappropriated* | 55,031.18 | |
| Grand Total | 4,323,495.24 | |

*Insert "Debit" or "Credit" as may be appropriate, showing the amount of debit in red.

## FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS

| ACCOUNT. | Balance at beginning of year. | Charges for Capital added during year. | Credits made to sub-account during year. | Balance at close of year. |
|---|---|---|---|---|
| INTANGIBLE FIXED CAPITAL: | | | | |
| 1. Organization | | | | |
| 2. Franchises | | | | |
| 3. Miscellaneous intangible capital | | | | |
| TANGIBLE FIXED CAPITAL: | | | | |
| 4. Land: | | | | |
| (a) Land occupied by gas works | 4 634 87 | | | 4 634 87 |
| (b) Land occupied by outside holder stations | | | | |
| (c) Rights of way | | | | |
| (d) Water rights | | | | |
| (e) General office land | | | | |
| (f) Miscellaneous land devoted to gas operations | | | | |
| 5. Structures: | | | | |
| (a) Works and station structures | 28 282 56 | | | 28 282 56 |
| (b) Holders | | | | |
| (c) General office structures | 22 330 21 | | | 22 330 21 |
| (d) Miscellaneous structures devoted to gas operations | 1 743 80 | | | 1 743 80 |
| 6. Boiler plant equipment | | | | |
| 7. Steam engines | | | | |
| 8. Internal combustion engines | | | | |
| 9. Accessory power equipment | | | | |
| 10. Benches and retorts | | | | |
| 11. Water gas sets | 5 958 00 | | | 5 958 00 |
| 12. Purification apparatus | | | | |
| 13. Accessory works equipment | 2 887 42 | | | 2 887 42 |
| 14. Mains | | | | |
| 15. Services | | | | |
| 16. Consumers' meters | | | | |
| 17. Consumers' Meter installation | | | | |
| 18. Street lighting equipment | | | | |
| 19. Gas appliances | | | | |

## FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS — (Continued)

| ACCOUNT | Balance at beginning of year. | Charges for capital added during year. | Credits made to sub-account during year. | Balance at close of year. |
|---|---|---|---|---|
| 20. General equipment: | | | | |
| (a) General office equipment | | | | |
| (b) Shop equipment | | | | |
| (c) Stores equipment | | | | |
| (d) Transportation equipment | | | | |
| (e) Telephone, telegraph and wireless system | | | | |
| (f) Laboratory equipment | | | | |
| (g) Miscellaneous equipment | | | | |
| 21. Miscellaneous tangible capital | | | | |
| 22. Engineering and superintendence during construction | | | | |
| 23. Law expenditures during construction | | | | |
| 24. Injuries and damages during construction | | | | |
| 25. Taxes during construction | | | | |
| 26. Interest during construction | | | | |
| 27. Miscellaneous construction expenditures | | | | |
| 28. Fixed capital not classified by prescribed accounts | | | | |
| 29. Cost of plant and equipment purchased | | | | |
| 30. Unfinished Plant Investment (construction work in progress) | | | | |
| Total | 76,036.36 | | | 76,036.36 |

## FIXED CAPITAL INSTALLED PRIOR TO ~~JANUARY 1~~ Dec. 1st, 1924, 1921

Give particulars of the credits made during the year in the accounts of the respondent representing its plant and equipment installed in service prior to January 1, 1921.

If the respondent's classification of fixed capital accounts in conformity with the principles embodied in the account for Fixed Capital Installed since December 31, 1920, became effective at an earlier date, the dates in the headings of the present schedule and the following schedule may be correspondingly modified.

Names of subaccounts shown in column (*a*) should be those carried on the respondent's books of account immediately prior to the adoption of the Uniform System of Accounts for Natural Gas Companies or its equivalent.

If the respondent's accounts representing plant and equipment installed prior to January 1, 1921, have been reclassified in accordance with the rules governing accounts for fixed capital installed since December 31, 1920, there may be shown in column (*a*) the names of accounts now carried on respondent's books representing such plant and equipment instead of those carried prior to the adoption of the Uniform System of Accounts for Natural Gas Companies.

In connection with the credits called for in column (*c*) of this schedule and column (*d*) of schedule on page 15, see paragraph 2, page 18, of the Uniform System of Accounts for Natural Gas Companies.

| NAMES OF ACCOUNTS KEPT PRIOR TO JANUARY 1, 1921. (a) | Balance at beginning of year. (b) | Credits made to sub-accounts during year. (c) | Balance at close of year. (d) |
|---|---|---|---|
| Plant and property purchased | 3,106,025.39 | 659.38 | 3,105,366.01 |
| Total | 3,106,025.39 | 659.38 | 3,105,366.01 |

| ACCOUNT. (a) | Balance at beginning of year. (b) | Charges for capital added during year. (c) | Credits made to reinvestment during year. (d) | Balance at close of year. (e) |
|---|---|---|---|---|
| I. UNDISTRIBUTED FIXED CAPITAL ACCOUNTS: | | | | |
| 220 Organization | 27 812 73 | 2 009 50 | | 30 822 23 |
| 221 Franchises | | | | |
| 222 Patent Rights and Licenses | | | | |
| 223 Other Undistributed Fixed Capital | | | | |
| II. PRODUCTION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 224 Land | | | | |
| 225 Leaseholds | | | | |
| 226 Rights of Way | | | | |
| 227 Natural Gas Rights | | | | |
| 228 Gas Well Structures | | | | |
| 229 Field Measuring Station Structures | | | | |
| 230 Other Production System Structures | | | | |
| 231 Gas Well Construction | | | | |
| 232 Gas Well Equipment | | | | |
| 233 Field Line Construction | | | | |
| 234 Field Line Equipment | | | | |
| 235 Field Measuring Station Equipment | | | | |
| 236 Drilling and Cleaning Equipment | | | | |
| 237 Other Production System Equipment | | | | |
| III. TRANSMISSION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 238 Land | 515 26 | 852 88 | | 1 368 14 |
| 239 Leaseholds | | | | |
| 240 Rights of Way | | 1 299 50 | | 1 299 50 |
| 241 Compressing Station Structures | | 2 002 45 | | 2 002 45 |
| 242 Transmission System Measuring Station Structures | | | | |
| 243 Other Transmission System Structures | | | | |
| 244 Compressing Station Equipment | | 2 885 46 | | 2 885 46 |
| 245 Transmission System Measuring Station Equipment | | | | |
| 246 Transmission Line Equipment | | 5 549 70 | | 5 549 70 |
| 247 Other Transmission System Equipment | | | | |
| IV. DISTRIBUTION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 248 Land | | | | |
| 249 Leaseholds | | | | |
| 250 Rights of Way | | | | |
| 251 District Regulator Structures | 827 66 | 1 805 85 | | 2 633 01 |
| 252 Other Distribution System Structures | | 1 876 47 | | 1 876 47 |
| 253 Gas Receivers and District Regulators | 2 415 12 | | | 2 415 12 |
| 254 Distribution Line Equipment | 163 436 30 | 7 912 26 | | 171 347 56 |
| 255 Service Line Equipment | 38 960 18 | 1 796 65 | 25 17 | 40 721 66 |
| 256 Meters | 21 189 63 | 3 644 68 | | 24 834 31 |
| 257 Meter Installation | 7 626 01 | 2 952 73 | | 10 578 74 |
| 258 House Regulators | | 3 293 65 | | 3 293 65 |
| 259 Other Distribution System Equipment | | | | |

| ACCOUNT. (a) | Balance at beginning of year. (b) | Charges for capital added during year. (c) | Credits made to accounts during year. (d) | Balance at close of year. (e) |
|---|---|---|---|---|
| V. UTILIZATION SYSTEM PROPERTY ACCOUNTS: | | | | |
| 240 Commercial Lighting System | | | | |
| 241 Municipal Street Lighting System | | | | |
| 242 Private Street Lighting System | | | | |
| 243 Other Utilization Equipment | | | | |
| VI. GENERAL PROPERTY ACCOUNTS: | | | | |
| 244 General Office Land | 50 000 00 | | | 50 000 00 |
| 245 Other General Land | | | | |
| 246 Leaseholds | | | | |
| 247 General Office Structures | 639 68 | 101 933 35 | | 102 633 03 |
| 248 Other General Structures | | | | |
| 249 General Office Equipment | 8 471 67 | 5 341 57 | | 13 813 24 |
| 250 General Store Equipment | | | | |
| 251 General Shop Equipment | 1 433 61 | | | 1 433 61 |
| 252 General Stable Equipment | | | | |
| 253 General Garage Equipment | 12 970 99 | 540 25 | 590 50 | 12 920 24 |
| 254 General Laboratory Equipment | | | | |
| 255 General Telephone and Telegraph System | | | | |
| 256 General Tools and Implements | | | | |
| 257 Other General Equipment | 1 305 70 | 7 09 | | 1 312 79 |
| VII. UNDISTRIBUTED CONSTRUCTION EXPENDITURE ACCOUNTS: | | | | |
| 258 Engineering and Superintendence during construction | | | | |
| 259 General Officers' and Clerks' salaries during construction | | | | |
| 260 General Officers' and Clerks' expenses during construction | | | | |
| 261 Office Supplies and Expenses during construction | | | | |
| 262 Law Expenditures during construction | | | | |
| 263 Injuries and Damages during construction | | | | |
| 264 ~~Insurance during Construction~~ IN PROGRESS | 80 868 36 | 157 359 86 | | 238 228 22 |
| 265 Taxes during construction | 950 02 | | | 950 02 |
| 266 Interest during construction | | | | |
| 267 Other Expenditures during construction | 71 00 | | | 71 00 |
| Total | 420 482 45 | 303 143 34 | 615 67 | 723 010 17 |
| SUMMARY OF FIXED CAPITAL: | | | | |
| Installed Prior to ~~January 1, 1921~~ Dec. 1, 1924 | 3 106 025 39 | • • • • • • | 659 38 | 3 105 366 01 |
| Installed Since December 31, 1920 | 420 482 45 | 303 143 39 | 615 67 | 723 010 17 |
| Total | 3 526 507 84 | 303 143 39 | 1 275 05 | 3 828 376 18 |

## INVESTMENT SECURITIES

| NAME OF ISSUING COMPANY AND DESCRIPTION OF SECURITY HELD. | PLEDGED. | | UNPLEDGED. | | INCOME DERIVED | | | Extent of control, if control exists. |
|---|---|---|---|---|---|---|---|---|
| | Par value. | Book value. | Par value. | Book value. | Rate. | Amount of dividends. | Amount of interest. | |
| **Investment of Affiliated Companies:** | | | None | | | | | |
| **Investment of Non-Affiliated Companies:** | | | None | | | | | |
| **Other Investments:** | | | | | | | | |
| One share no par stock of the Lima Gasoline Company | | 50 00 | | | 50 | 16 00 | | |
| **Total** | | 50 00 | | | | 16 00 | | |

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FUND ACCOUNTS

## FUND ACCOUNTS

| NAME OF FUND. | Par value. | Book value. | Balance in Fund at beginning of year. | Additions to Fund During Year. | Withdrawals from Fund During Year. | Balance in Fund at close of year. |
|---|---|---|---|---|---|---|
| Sinking Fund Assets. | | | None | | | |
| Depreciation Fund Assets: | | | None | | | |
| Insurance and Other Reserve Fund Assets: | | | None | | | |
| Total | | | | | | |

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## CASH AND SPECIAL DEPOSITS



| Name of depositary. | Purpose of Deposit | Amount at close of year |
|---|---|---|
| The Lima Trust Co. - Lima Ohio. | Operations | 11 687 95 |
| Peoples National Bank Wapakoneta, O | " | 588 90 |
| American State Bank - St. Marys, O. | " | 420 74 |
| Commercial Bank Co - Celina, O. | " | 401 62 |
| Peoples Exchange Bank - Coldwater, O. | " | 241 41 |
| The Bank of Ottawa - Ottawa, O | " | 432 67 |
| The Bank of Leipsic - Leipsic, O | " | 577 49 |
| The Commercial Bank & Savings Co. Bluffton, Ohio. | " | 295 95 |
| The Commercial Bank - Kenton, O. | " | 459 11 |
| Payroll Fund Lima Trust Co. | " | 200 00 |
| Harvey Stuart Co - Chicago, Ill | Tax over 2% normal tax on Bondholders' interest. | 600 00 |
| Petty Cash Funds | | 870 70 |
| | Total, | 16 776 54 |

## NOTES AND ACCOUNTS RECEIVABLE

| Bills Receivable. Name of debtor | Amount at close of year | *Miscellaneous Accounts Receivable. Name of debtor | Amount at close of year |
|---|---|---|---|
| None | | Acts Receivable - Customers | 46 442 34 |
| | | " " - Mercantile | 22 298 96 |
| | | " " - Misc. | 2 760 88 |
| Total, | | Total, | 71 502 18 |

## ACCOUNTS RECEIVABLE FROM AFFILIATED COMPANIES

| Name of debtor. | Character of transaction | Amount at close of year |
|---|---|---|
| The Delphos Gas Company | Gas & Materials supplied | 1 497 75 |
| Indiana Electric Corporation | Services Rendered | 39 00 |
| | Total, | 1 536 75 |

*Show principal items only. Minor items may be reported in one group.

## PROPERTY ABANDONED

| Items. | Year of Abandonment | Balance in Account at beginning of year | Amount Charged to Account during year | Amount Credited to Account during year | Balance in Account at close of year |
|---|---|---|---|---|---|
| None | | | | | |
| Total. | | | | | |

REMARKS

## CAPITAL STOCK.

| CLASS OF STOCK. | NUMBER OF SHARES AUTHORIZED. | PAR VALUE OF ONE SHARE. | TOTAL PAR VALUE AUTHORIZED* | TOTAL PAR VALUE OUTSTANDING. | TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY. | IN SINKING OR OTHER FUNDS. | TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION. | DIVIDENDS DECLARED DURING YEAR. Rate | AMOUNT. |
|---|---|---|---|---|---|---|---|---|---|
| Common | 75,000 | none | | 75,000 | | | | | 52,500 00 |
| Preferred - Class A. | 1,000 | 100 | $ 100,000 | 300,000 | | | | 7 | 21,000 00 |
| " " B | 4,500 | 100 | 450,000 | 450,000 | | | | 7 | 31,500 00 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| TOTAL. | | | | | | | | | 105,000 00 |

## FUNDED DEBT.

| DESIGNATION OF NOMINAL OR OBLIGATION. | TERM. Date of Issue | TERM. Date Maturity | TOTAL PAR VALUE AUTHORIZED* | TOTAL PAR VALUE OUTSTANDING. | TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY. | IN SINKING OR OTHER FUNDS. | TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION | INTEREST. Rate | When Payable. | AMOUNT ACCRUED DURING YEAR. | AMOUNT PAID DURING YEAR. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| First Sf Refunding | 12/1/24 | 12/1/54 | 1,000,000 | 1,000,000 | | | 1,000,000 | 6 | 6/1 and 12/1 | 60,000 00 | 60,000 00 |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| TOTAL. | | | 1,000,000 | 1,000,000 | | | 1,000,000 | | | 60,000 00 | 60,000 00 |

*Purpose for which issue was authorized.

Receipts Outstanding at the close of the year for installments received on subscriptions for stocks were as follows:

Common stock, $ ; Second preferred stock, $ ; First preferred stock, $ ; Debenture stock, $ ; All classes, $





SECURITY FOR FUNDED DEBT.

| DESIGNATION OF BOND OR OBLIGATION | PROPERTY MORTGAGED AND SECURITIES PLEDGED. DESCRIPTION. | VALUE. | REMARKS. |
|---|---|---|---|
| First & Refunding Mortgage Bonds | Entire Property | 3904-1264 | |

## SUNDRY CURRENT LIABILITIES

| NAME OF CREDITOR OR OBLIGATION. | CHARACTER OF TRANSACTIONS INVOLVED. | Credit balance at close of year. |
|---|---|---|
| | Notes Payable | |
| Midland Utilities Co. | Advance for Construction | 400,000.00 |
| | Total, | 400,000.00 |
| | Accounts Payable to Affiliated Companies | |
| Northern Indiana Public Service Co. | Services Rendered | 1.51 |
| Commerce Trustee | Premiums | 174.39 |
| Midland Utility of Indiana | Supplies Furnished | 161.81 |
| Midland Utilities Company | Interest on Loans and Quarterly payments for | 4,894.24 |
| Midland United Company | Federal Tax | |
| | Services Rendered | 3,216.11 |
| | Total, | 8,452.76 |
| | Matured Funded Debt | |
| | Total, | 408,452.76 |

## DEPRECIATION OF STRUCTURES AND EQUIPMENT RESERVE

| DEBIT ITEMS. | | CREDIT ITEMS. | |
|---|---|---|---|
| Retirements During the Year | $ 195.04 | Balance at Beginning of Year | 186,789.82 |
| Other Debits: | 295.46 | Amount Reserved During the Year by Charges to Operating Expenses | 58,565.42 |
| | | Other Credits: | |
| Balance at Close of Year | 236,884.52 | | |
| Total, | 245,355.24 | Total, | 245,355.24 |

## BASIS FOR DEPRECIATION RESERVE.

Explain here in detail the basis upon which the charge to operating expenses on account of depreciation is founded and also the method by which the amount in question was derived. The amount here shown will be the same as that carried to "Depreciation of Structures and Equipment Reserve" on the General Balance Sheet.

General property depreciated in accordance with order of Ill. Public Utilities Commission of Ohio.
Automatic gas utility plant equipment depreciated on basis of actual cost of equipment less estimated salvage & charged over life.

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## RESERVES

| DEBIT ITEMS | | | | CREDIT ITEMS | | | |
|---|---|---|---|---|---|---|---|
| **INSURANCE RESERVES** | | | | | | | |
| | | | | Balance at Beginning of Year | | | |
| | | | | Amount Reserved During the Year by Charges to Operating Expenses | | | |
| | | | | Other Credits: | | | |
| Balance at Close of Year | | | | | | | |
| Total | | | | Total | | | |
| **INJURIES AND DAMAGES RESERVE** | | | | | | | |
| Charges account miscellaneous accidents and damages | | 650 | 97 | Balance at Beginning of Year | 2 | 301 | 61 |
| | | | | Amount Reserved During the Year by Charges to Operating Expenses | | | |
| | | | | Other Credits: | | | |
| Balance at Close of Year | 2 | 651 | 04 | | | | |
| Total | 2 | 301 | 61 | Total | 2 | 301 | 61 |
| **UNCOLLECTIBLE CONSUMERS' ACCOUNTS RESERVE** | | | | | | | |
| 12 months bills charged off | 2 | 878 | 26 | Balance at Beginning of Year | 4 | 449 | 82 |
| Adjusting 1939 Reserve | 1 | 871 | 54 | Amount Reserved During the Year by Charges to Operating Expenses | 4 | 312 | 82 |
| | | | | Other Credits: | | | |
| Balance at Close of Year | 4 | 312 | 82 | | | | |
| Total | $ | 762 | 64 | Total | $ | 762 | 64 |
| **AMORTIZATION OF OTHER CAPITAL RESERVE** Pipe Lines | | | | | | | |
| | | | | Balance at Beginning of Year | 4 | 105 | 54 |
| | | | | Amount Reserved During the Year by Charges to Operating Expenses | 11 | 708 | 00 |
| | | | | Other Credits: | | | |
| Balance at Close of Year | 15 | 813 | 54 | | | | |
| Total | 15 | 813 | 54 | Total | 15 | 813 | 54 |
| **OTHER RESERVES** | | | | | | | |
| | | | | Balance at Beginning of Year | | | |
| | | | | Amount Reserved During the Year by Charges to Operating Expenses | | | |
| | | | | Other Credits: | | | |
| Balance at Close of Year | | | | | | | |
| Total | | | | Total | | | |

**MEMORANDUM**

Use this page for an explanation of any item contained in this report where sufficient space is not available.

28

## CORPORATE SURPLUS UNAPPROPRIATED

| ITEM | DEBITS | CREDITS | REMARKS |
|---|---|---|---|
| CREDITS: | | | |
| Credit balance at beginning of year | | 52,887.54 | |
| Credit balance transferred from Income Account | | 2,143.64 | |
| Uncollectible Consumers' Accounts recovered | | | |
| Uncollectible Non-Operating Revenues recovered | | | |
| Other Additions to Surplus | | | |
| Miscellaneous Credits | | | |
| DEBITS: | | | |
| Debit balance at beginning of year | | | |
| Debit balance transferred from Income Account | | | |
| Surplus Appropriated for Sinking Funds | | | |
| Surplus Appropriated for Other Reserve Funds | | | |
| Surplus Appropriated for Dividends—Page 28 | | | |
| Surplus Appropriated for Investment in Fixed Capital | | | |
| Gifts to Affiliated Companies | | | |
| Expenses unprovided for elsewhere | | | |
| Amortization unprovided for elsewhere | | | |
| Other Appropriations of Surplus | | | |
| Other Deductions from Surplus | | | |
| Uncollectible Consumers' Accounts—Old Year | | | |
| Uncollectible Non-Operating Revenues—Old Year | | | |
| Miscellaneous Debits | | | |
| Balance carried forward to Balance Sheet | 55,031.18 | | |
| Total | 55,031.18 | 55,031.18 | |

## DIVIDENDS DECLARED DURING THE YEAR

| NAME OF SECURITY ON WHICH DIVIDEND WAS DECLARED | Rate Per Cent. Regular. | Rate. Extra. | Par value of amount on which dividend was declared. | *Amount of dividend. | Date. Declared. | Date. Payable. |
|---|---|---|---|---|---|---|
| Dividends Charged to Income: | | | | | | |
| Class "A" Preferred Quarterly | 1¾ | | 300,000.00 | 5,250.00 | 1/20/30 | 2/1/30 |
| " " " " | " | | 300,000.00 | 5,250.00 | 4/30/30 | 5/1/30 |
| " " " " | " | | 300,000.00 | 5,250.00 | 7/25/30 | 8/1/30 |
| " " " " | " | | 300,000.00 | 5,250.00 | 10/24/30 | 11/1/30 |
| " "B" " " | " | | 450,000.00 | 7,875.00 | 1/10/30 | 2/1/30 |
| " " " " | " | | 450,000.00 | 7,875.00 | 4/30/30 | 5/1/30 |
| " " " " | " | | 450,000.00 | 7,875.00 | 7/25/30 | 8/1/30 |
| " " " " | " | | 450,000.00 | 7,875.00 | 10/24/30 | 11/1/30 |
| Common Stock - 10¢ per share | | | | 7,500.00 | 6/29/30 | 6/30/30 |
| " " - 20¢ " " | | | | 15,000.00 | 12/23/30 | 12/31/30 |
| " " - 40¢ " " | | | | 80,000.00 | 12/22/30 | 12/31/30 |
| Total Charged to Income | | | | 105,000.00 | | |
| Dividends Charged to Surplus: | | | | | | |
| Total Charged to Surplus: | | | | | | |
| Grand Total | | | | 105,000.00 | | |

Note: Difference between dividends declared and dividends charged to income, page 29, account 46 stock reacquired.

*Total of this column should correspond with like item on page 23.

300

## INCOME ACCOUNT
(Entire Company)



| ACCOUNT. | AMOUNT | REMARKS |
|---|---|---|
| **I. OPERATING INCOME:** | | |
| 1. Operating Revenues—Page 30 | 721 340 07 | |
| 2. Operating Expenses—Pages 32-36-40 | 481 756 17 | |
| 3. *Net Operating Revenue | 239 583 90 | |
| **II. NON-OPERATING REVENUES AND EXPENSES** | | |
| 4. Revenues—Page 41 | 58 594 86 | |
| 5. Expenses—Page 41 | 58 819 39 | |
| 6. *Net Non-Operating Revenue | 224 53 | |
| 7. *Total Net Operating Income (Total Items 3 & 6) | 239 369 87 | |
| 8. Taxes Assignable to Operations—Page 43 | 55 482 14 | |
| 9. *Gross Income (Item 7 less Item 8) | 183 887 23 | |
| **III. GROSS INCOME DEDUCTIONS.** | | |
| 10. Rent for Lease of Public Utility Properties—Page 44 | | |
| 11. Joint Facility Rent | | |
| 12. Other Rent Deductions | | |
| 13. Interest Accrued on Funded Debt—Page 23 | 60 000 00 | |
| 14. Interest Accrued on Unfunded Debt | 14 240 81 | |
| 15. Guaranties of Periodic Payments | | |
| 16. Loss on Operations of Others | | |
| 17. Other Contractual Deductions from Income | | |
| 18. Amortization of Debt Discount and Expense | 3 913 68 | |
| 19. Amortization of Interests in Leased Capital | | |
| 20. Other Deductions from Income | 563 15 | |
| 21. Amortization of Premiums on Debt | | |
| 22. Total Deductions from Gross Income | 78 737 64 | |
| 23. *Net Income (Item 9 less Item 22) | 105 139 59 | |
| **IV. NET INCOME APPROPRIATIONS** | | |
| 24. Net Income Appropriated for Sinking Funds—Page 45 | | |
| 25. Net Income Appropriated for Depreciation Reserve Fund—Page 45 | | |
| 26. Net Income Appropriated for Other Reserve Funds—Page 45 | | |
| 27. Net Income Appropriated for Dividends—Page 28 | 102 996 25 | |
| 28. Net Income Appropriated for Investment in Fixed Capital—Page 45 | | |
| 29. Total Appropriations of Income | 102 996 25 | |
| 30. *Balance transferred to surplus—Page 28 (Item 23 less Item 29) | 2 143 34 | |

31. The operating revenues and expenses above stated relate to the period beginning Jan. 1st, 1930, and ending Dec. 31st, 1930

*If deficit, in Red.

30 ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—OPERATING REVENUES

| ACCOUNT. | CLASS. | | | AMOUNT. | REMARKS. |
|---|---|---|---|---|---|
| ARTIFICIAL GAS REVENUES: | | | | | |
| 1. Metered Domestic and Commercial Sales | A | B | C | 446 708 12 | |
| 2. Metered Industrial Sales | A | B | C | 41 962 11 | |
| 3. Metered Sales for Municipal Street Lighting | A | B | C | | |
| 4. Metered Sales for Other Municipal Purposes | A | B | C | 1 487 47 | |
| 5. Metered Sales to Other Gas Utilities | A | B | C | 4 228 49 | |
| 6. Flat-Rate Sales to General Consumers | A | B | C | | |
| 7. Flat-Rate Sales for Municipal Street Lighting | A | B | C | | |
| 8. Flat-Rate Sales for Other Municipal Purposes | A | B | C | | |
| 9. Prepaid Gas Sales | A | B | C | | |
| 10. Commissions on Others' Gas | A | B | C | | |
| 11. Consumers' Discounts Forfeited and Penalties Imposed | A | B | C | 4 599 38 | |
| Total Artificial Gas Revenues | | | | 498 810 77 | |
| NATURAL GAS REVENUES: | | | | | |
| 1. Metered Private Sales | | | C | | |
| 2. Metered Domestic and Commercial Sales | A | B | | 214 344 43 | |
| 3. Metered Industrial Sales | A | B | | 6 563 24 | |
| 4. Other Metered Private Sales | A | B | | | |
| 5. Metered Sales of Other Natural Gas Utilities | | | C | | |
| 6. Metered Sales to Affiliated Natural Gas Utilities | A | B | | | |
| 7. Metered Sales to Non-affiliated Natural Gas Utilities | A | B | | | |
| 8. Metered Public Sales | A | B | C | 949 75 | |
| 9. Unmetered Private Sales | | | C | | |
| 10. Unmetered Domestic and Commercial Sales | A | B | | | |
| 11. Unmetered Industrial Sales | A | B | | | |
| 12. Unmetered Sales for Lighting Private Streets | A | B | | | |
| 13. Other Unmetered Private Sales | A | B | | | |
| 14. Unmetered Sales to Other Natural Gas Utilities | | | C | | |
| 15. Unmetered Sales to Affiliated Natural Gas Utilities | A | B | | | |
| 16. Unmetered Sales to Non-affiliated Natural Gas Utilities | A | B | | | |
| 17. Unmetered Public Sales | | | C | | |
| 18. Unmetered Sales for Municipal Street Lighting | A | B | | | |
| 19. Unmetered Sales for Other Municipal Uses | A | B | | | |
| 20. Consumers' Discounts Forfeited and Penalties Imposed | A | B | C | 571 88 | |
| 21. Allowances to Consumers | A | B | C | | |
| Total Natural Gas Revenues | | | | 224 469 30 | |
| ELECTRIC REVENUES: | | | | | |
| 1. Municipal Light and Power Revenues | | | C | | |
| 2. Municipal Street Lighting—Arc | A | B | | | |
| 3. Municipal Street Lighting—Incandescent | A | B | | | |
| 4. Other Municipal Light and Power Revenues—Metered | A | B | | | |
| 5. Other Municipal Light and Power Revenues—Flat-Rate | A | B | | | |
| 6. Private Light and Power Revenues | | | C | Not Applicable | |
| 7. Residence Light and Power Revenues—Metered | A | B | | | |
| 8. Residence Light and Power Revenues—Flat-Rate | A | B | | | |
| 9. Commercial Light and Power Revenues—Metered | A | B | | | |
| 10. Commercial Light and Power Revenues—Flat-Rate | A | B | | | |
| 11. Miscellaneous Electric Revenues | | | C | | |
| 12. Sales to Other Public Utilities | A | B | | | |
| 13. Other Miscellaneous Electric Revenues | A | B | | | |
| Total Electric Revenues | | | | | |
| Grand Total Operating Revenues | | | | 723 280 07 | |

## OPERATING EXPENSES — ARTIFICIAL GAS
(Entire Company)



| ACCOUNT. | AMOUNT. |
|---|---|
| **I. Production Expenses:** | |
| 1. Works Superintendence, | 1 800 00 |
| 2. Works Labor, | 3 518 94 |
| 3. ~~Boiler~~ Fuel, Mtce. Purification Apparatus | 248 50 |
| 4. ~~Water~~, Laboratory Equipment | 62 46 |
| 5. ~~Fuel Under Retorts~~, Heater Steam Adjustment | 935 0 |
| 6. ~~Coal Carbonized~~, Purification Labor | 201 58 |
| 7. ~~Coal Gas Enriched~~, Misc. Works Labor | 2 240 98 |
| 8. Generator Fuel, | 26 426 45 |
| 9. ~~Water Gas Oil~~, Duplicate Production Charges | 345 80 |
| 10. ~~Purifying Supplies~~, Steam generated Apport. Acct. | 12 415 32 |
| 11. Miscellaneous Works Expense, | 1 033 10 |
| 12. Gas Storage, | 954 99 |
| 13. ~~Gas from Other Sources~~, Mtce. of Holders | 246 16 |
| 14. Works and Station Structures — Maintenance, | 516 13 |
| 15. Power-Plant Equipment — Maintenance, | 265 68 |
| 16. Gas Apparatus — Maintenance, | 1 136 17 |
| 17. ~~Works Tools~~ — Maintenance, Accessory Works Equipment | 312 25 |
| TOTAL PRODUCTION EXPENSES, | 50 859 57 |
| **II. Transmission and Distribution Expenses:** | |
| 18. Transmission Pumping, Duplicate Dist. Charges (Cr.) | 5020 86 |
| 19. Distribution Superintendence, | 24 00 |
| 20. Distribution Supplies and Expenses, Gd Operating Labor | 3 708 69 |
| 21. ~~Gas Meter and Installation Work~~, Maps and Records | 2 934 30 |
| 22. Work on Consumers' Premises, | 862 63 |
| 23. Gas Mains and Services — Maintenance, | 6 216 85 |
| 24. Gas Meters — Maintenance, | 7 706 26 |
| 25. Distribution Tools — Maintenance, Shop Building | 9 210 46 |
| 26. Gas Appliances — Maintenance, | 264 79 |
| TOTAL TRANSMISSION AND DISTRIBUTION EXPENSES, | 2 355 97 |
| | 38 676 69 |
| **III. Street and Park Lighting Expenses:** | |
| 27. Street Lamp Operation, | |
| 28. Street Lamps — Maintenance, | |
| TOTAL STREET AND PARK LIGHTING EXPENSES, | |
| **IV. Commercial Expenses:** | |
| 29. Commercial Administration, Other Commercial Labor | 12 408 57 |
| 30. ~~Advertising~~, Meter Reading | 4 940 03 |
| 31. Other Commercial Expenses, | 3 947 20 |
| TOTAL, COMMERCIAL EXPENSES, | 21 295 80 |
| IVA Natural Gas Purchased | 108 614 99 |

32 OPERATING EXPENSES—ARTIFICIAL GAS—(Concluded.)
(Entire Company)

| ACCOUNT. | AMOUNT. |
|---|---|
| V. NEW BUSINESS EXPENSES: | |
| 32. New business salaries | 1 823 92 |
| 33. ~~New business supplies and expenses~~ Demonstrations | 1 937 90 |
| 34. Advertising supplies and expenses | 1 519 67 |
| 35. Canvassing and soliciting | 9 434 52 |
| 36. Miscellaneous new business supplies and expenses | 520 68 |
| Total New Business Expenses | 15 316 69 |
| VI. GENERAL AND MISCELLANEOUS EXPENSES: | |
| 37. Salaries and expenses of general officers | 14 271 04 |
| 38. Salaries and expenses of general office clerks | 7 067 26 |
| 39. General office supplies and expenses | 2 064 02 |
| 40. General law expenses | 1 700 40 |
| 41. Miscellaneous general expenses | 3 978 37 |
| 42. Insurance | 3 240 03 |
| 43. Relief department and pensions | 1 468 45 |
| 44. ~~Gas franchise requirements~~ Regulatory Commission Expense | 2 087 26 |
| 45. Uncollectible Consumers' Accounts Midland Company Services | 5 709 38 |
| 46. ~~Residuals expense~~ Donations | 2 019 17 |
| 47. ~~General amortization~~ Association Exp. | 1 029 06 |
| 48. Injuries to persons and property | 2 96 |
| 49. Stationery and printing | 504 05 |
| 50. ~~Store expenses~~ Strike, bond expense | 1 534 69 |
| 51. ~~Stable expenses~~ Inventory Expense | 433 31 |
| 52. Miscellaneous adjustments—Balance | 548 14 |
| 53. General structures—Maintenance | 275 |
| ~~Total General and Miscellaneous Expenses~~ General Publicity & Advertising | 1 202 54 |
| Accrue Employees' Life Insurance | 704 25 |
| Duplicate Misc. Charges (Cr.) | 1 667 53 |
| Uncollectible Bills | 2 294 58 |
| Indirect Charges to Construction (Cr.) | 8 655 86 |
| ~~Recapitulation of Operating Expenses~~: Total - General & Misc. Expenses | 40 381 12 |
| I. Production | 50 859 57 |
| II. Transmission and Distribution | 38 676 69 |
| III. Street and Park Lighting | |
| IV. Commercial | 21 295 80 |
| V. New Business | 15 316 69 |
| VI. General and Miscellaneous | 40 381 12 |
| Natural Gas Purchased | 108 614 99 |
| TOTAL | 275 144 86 |

## NATURAL GAS—OPERATING EXPENSES
(Entire Company)



| | ACCOUNT. | CLASS. | | | AMOUNT. |
|---|---|---|---|---|---|
| | A. PRODUCTION SYSTEM ACCOUNTS: | | | | |
| | Operating Labor | | | | |
| 309 | Supervision | | B | C | |
| 311 | Gas Well and Field Line Labor | A | | | |
| 313 | Field Measuring Station Labor | A | | | |
| 315 | Other Labor | A | | | |
| | Operating Supplies and Expenses | A | | | |
| 314 | Supervision Supplies and Expenses | | B | C | |
| 316 | Gas Well and Field Line Supplies and Expenses | A | | | |
| 318 | Field Measuring Station Supplies and Expenses | A | | | |
| 317 | Production System Rent | A | | | |
| 319 | Other Supplies and Expenses | A | | | |
| 320 | Gas Well Royalties | A | | | |
| 321 | Rents on Unopened Leases | A | B | C | |
| | Maintenance of Production System Structures | A | B | C | |
| 322 | Maintenance of Gas Well Structures | | B | C | |
| 323 | Maintenance of Other Production System Structures | A | | | |
| | Maintenance of Production System Equipment | A | | | |
| | Maintenance of Gas Well and Field Line Equipment | | | C | |
| 324 | Maintenance of Gas Well Equipment | | B | | |
| 325 | Maintenance of Field Line Equipment | A | | | |
| | Abandoning Wells and Changing Field Lines | A | | | |
| | Maintenance of Other Production System Equipment | A | | | |
| 326 | Maintenance of Field Measuring Station Equipment | | B | | |
| 327 | Maintenance of Drilling and Cleaning Equipment | A | | | |
| 328 | Maintenance of Other Production Equipment | A | | | |
| | | A | | | |
| | Total Production Expenses | | | | |
| | B. NATURAL GAS PRODUCED BY OTHERS: | | | | |
| 329 | Natural Gas Purchased for Resale | | | | |
| 330 | Purchased Gas Expense | A | B | C | 99164.56 |
| | | A | B | C | |
| | Total Produced Expense | | | | |
| | C. TRANSMISSION SYSTEM ACCOUNTS: | | | | |
| | Operating Labor | | | | |
| 331 | Supervision | | B | C | |
| 332 | Compressing Station Labor | A | | | |
| 333 | Measuring Station Labor | A | | | |
| 334 | Transmission Line Labor | A | | | |
| 335 | Other Transmission System Labor | A | | | |
| | Operating Supplies and Expenses | A | | | |
| 336 | Supervision Supplies and Expenses | | B | C | |
| 337 | Compressing Station Supplies and Expenses | A | | | |
| 338 | Measuring Station Supplies and Expenses | A | | | |
| 339 | Transmission Line Supplies and Expenses | A | | | |
| 340 | Transmission System Rent | A | | | |
| 341 | Other Transmission System Supplies and Expenses | A | | | |
| | Maintenance of Transmission System Structures | A | | | |
| 342 | Maintenance of Compressing Station Structures | | B | C | |
| 343 | Maintenance of Other Transmission System Structures | A | | | |
| | Maintenance of Transmission System Equipment | A | | | |
| 344 | Maintenance of Compressing Station Equipment | | | C | |
| | Maintenance of Transmission Lines | A | B | | |
| 345 | Maintenance of Transmission Line Equipment | | b | | |
| 346 | Clearing Transmission Lines | A | | | |
| | Maintenance of Other Transmission System Equipment | A | | | |
| 347 | Maintenance of Measuring Station Equipment | | B | | |
| 348 | Maintenance of Other Transmission Equipment | A | | | |
| | | A | | | |
| | Total Transmission Expenses | | | | |

34 NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)

| ACCOUNT | | CLASS | | | AMOUNT | | | |
|---|---|---|---|---|---|---|---|---|
| | D. DISTRIBUTION SYSTEM ACCOUNTS: | | | | | | | |
| | Operating Labor | | B | C | | | | |
| 380 | Superintendence | | | | | | | |
| 380 | Distribution Line Labor | A | | | | 4 | 62 | 53 |
| 381 | Labor Removing and Resetting Meters and House Regulators | A | | | | | | |
| 382 | Labor Inspecting and Testing Meters and House Regulators | A | | | | | 358 | 16 |
| 383 | Other Meter Department Labor | A | | | | | | |
| 384 | Other Distribution System Labor Operating Labor | A | | | | 1 | 019 | 48 |
| | Operating Supplies and Expenses | | B | C | | | | |
| 385 | Superintendence Supplies and Expenses | | | | | | | |
| 386 | Distribution Line Supplies and Expenses | A | | | | 1 | 536 | 27 |
| 387 | Meter Department Supplies and Expenses | A | | | | | | |
| 388 | Distribution System Rent- Maps & Records | A | | | | | 32 | 42 |
| 389 | Other Distribution System Supplies and Expenses | A | | | | | | |
| 400 | Maintenance of Distribution System Structures (Work on Customers' Premises | A | B | C | | | 355 | 80 |
| | Maintenance of Distribution System Equipment | | | C | | | | |
| | Maintenance of Distribution System Lines | | B | | | | | |
| 401 | Maintenance of Distribution Line Equipment | A | | | | | 802 | 09 |
| 402 | Changing Distribution Lines | A | | | | | | |
| 403 | Maintenance of Service Line Equipment | A | | | | | 813 | 62 |
| | Maintenance of Meters and House Regulators | | B | | | | | |
| 404 | Maintenance of Meters | A | | | | 1 | 06 | 47 |
| 405 | Maintenance of House Regulators | A | | | | | 6 | 57 |
| | Maintenance of Other Distribution System Equipment | | B | | | | | |
| 406 | Maintenance of Gas Receivers and District Regulators Appliances | A | | | | 1 | 46 | 42 |
| 407 | Maintenance of Other Distribution Equipment | A | | | | | 82 | 84 |
| | Duplicate Discount Charges (Cr.) | | | | | | 20 | 11 |
| | Total Distribution Expenses | | | | | 12 | 809 | 01 |
| | E. UTILIZATION SYSTEM ACCOUNTS: | | | | | | | |
| | Operating Labor | | B | C | | | | |
| 408 | Commercial Lighting System Labor | A | | | | | | |
| 409 | Municipal Street Lighting System Labor | A | | | | | | |
| 410 | Private Street Lighting System Labor | A | | | | | | |
| 411 | Consumer's Premises Labor | A | | | | | | |
| | Operating Supplies and Expenses | | B | C | | | | |
| 412 | Commercial Lighting System Supplies and Expenses | A | | | | | | |
| 413 | Municipal Street Lighting System Supplies and Expenses | A | | | | | | |
| 414 | Private Street Lighting System Supplies and Expenses | A | | | | | | |
| 415 | Consumers' Premises Supplies and Expenses | A | | | | | | |
| | Maintenance of Utilization System Equipment | | B | C | | | | |
| 416 | Maintenance of Commercial Lighting System | A | | | | | | |
| 417 | Maintenance of Municipal Street Lighting System | A | | | | | | |
| 418 | Maintenance of Private Street Lighting System | A | | | | | | |
| 419 | Maintenance of Other Utilization Equipment | A | | | | | | |
| | Total Utilization Expenses | | | | | | | |
| | F. COMMERCIAL DEPARTMENT ACCOUNTS: | | | | | | | |
| 420 | Operating Labor | A | B | C | | 5 | 060 | 71 |
| 421 | Operating Supplies and Expenses | A | B | C | | 3 | 402 | 90 |
| | Water Heater Survey | | | | | 1 | 675 | 00 |
| | Total Commercial Expenses | | | | | 10 | 124 | 63 |
| | G. NEW BUSINESS DEPARTMENT ACCOUNTS: | | | | | | | |
| | New Business Salaries and Commissions | | B | C | | | | |
| 422 | New Business Salaries | | | | | | | |
| 423 | New Business Commissions Contracting & Selecting | A | | | | | 145 | 18 |
| 424 | New Business Supplies and Expenses | A | | | | 1 | 144 | 26 |
| 425 | New Business Piping Labor Advertising | A | B | C | | | 124 | 08 |
| 426 | New Business Piping Supplies and Expenses Demonstrations | A | B | C | | | 495 | 55 |
| | Total New Business Expenses | | | | | | 112 | 78 |
| | | | | | | 2 | 523 | 85 |

## NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)



| ACCOUNT. | | CLASS. | | | AMOUNT. |
|---|---|---|---|---|---|
| H. GENERAL ADMINISTRATIVE ACCOUNTS: | | | | | |
| General Administrative Salaries | | B | C | | |
| 427 Salaries of General Officers | A | | | | 6528 96 |
| 428 Salaries of General Office Clerks | A | | | | 3221 89 |
| General Administrative Supplies and Expenses | | | C | | |
| General Administrative Supplies | | B | | | |
| 429 General Office Stationery and Printing | A | | | | 233 45 |
| 430 Other General Office Supplies | A | | | | 943 85 |
| General Officers' and General Office Clerks' Expenses | | B | | | |
| 431 General Officers' Expenses | A | | | | |
| 432 General Office Clerks' Expenses | A | | | | |
| Other General Administrative Expenses | | B | | | |
| 433 General Law Expenses | A | | | | 908 26 |
| 434 General Office Rent | A | | | | |
| 435 Other General Office Expenses | A | | | | |
| 436 Maintenance of General Office Structures | A | B | C | | 1 25 |
| 437 Maintenance of General Office Equipment | A | B | C | | 125 42 |
| Total Administrative Expenses | | | | | 11 967 88 |
| I. OTHER GENERAL EXPENSE ACCOUNTS: | | | | | |
| General Labor | | | C | | |
| 438 Store Labor | A | B | | | |
| Stable and Garage Labor | | B | | | |
| 439 Stable Labor General Publicity & Advertising | A | | | | 165 38 |
| 440 Garage Labor | A | | | | |
| Shop and Laboratory Labor Stock Yard Board Expense | | B | | | 706 49 |
| 441 Shop Labor Donations | A | | | | 150 94 |
| 442 Laboratory Labor Association Expense | A | | | | 204 36 |
| 443 Telephone and Telegraph System Labor | A | B | | | |
| General Supplies and Expenses | | | C | | |
| 444 Store Supplies and Expenses | A | B | | | |
| Stable and Garage Supplies and Expenses | | B | | | |
| 445 Stable Supplies and Expenses Undistributed Adjustments | A | | | | 211 47 |
| 446 Garage Supplies and Expenses | A | | | | |
| Shop and Laboratory Supplies and Expenses Insurance Expense | | B | | | 197 91 |
| 447 Shop Supplies and Expenses Employees' Life Insurance | A | | | | 322 85 |
| 448 Laboratory Supplies and Expenses | A | | | | |
| 449 Telephone and Telegraph System Supplies and Expenses | A | B | | | |
| 450 Natural Gas Franchise Requirements Midland Insurance Service | A | B | C | | 2 607 18 |
| 451 (See Gross Income Deduction Account No. 699A) | | | | | |
| 452 Uncollectible Consumers' Accounts | A | B | C | | 1 098 65 |
| Other General Expenses | | | C | | |
| 453 Public Utilities Commission Expense | A | B | | | |
| Insurance, Relief and Pension Expense Indirect Chg. to Construction (Cr.) | | B | | | 9 572 10 |
| 454 Injuries and Damages | A | | | | 2 96 |
| 455 Other Insurance | A | | | | 339 81 |
| 456 Relief and Pensions | A | | | | 671 45 |
| 457 Other General Expense | A | B | | | 1 412 47 |
| Amount Carried Forward Duplicate Misc. Charges | | | | | 562 50 |
| Amount Carried Forward | | | | | 4 574 38 |

## NATURAL GAS—OPERATING EXPENSES—(Concluded)
(Entire Company)



| | ACCOUNT. | CLASS | | | AMOUNT. | | | |
|---|---|---|---|---|---|---|---|---|
| | Amount Brought Forward | | | | | | | |
| | General Adjustments | | | C | | | 4,574 | 38 |
| 458 | Inventory Adjustments | A | B | | | | | |
| 459 | Discount on Materials and Supplies | A | B | | | | | |
| 460 | Utility's Natural Gas Used in Operations | A | B | | | | | |
| 461 | Free Municipal Natural Gas Service | A | B | | | | | |
| | Maintenance of General Structures | | B | C | | | | |
| 462 | Maintenance of General Store Structures | A | | | | | | |
| 463 | Maintenance of General Stable Structures | A | | | | | | |
| 464 | Maintenance of General Garage Structures | A | | | | | | |
| 465 | Maintenance of General Shop Structures | A | | | | | | |
| 466 | Maintenance of General Laboratory Structures | A | | | | | | |
| 467 | Maintenance of other General Structures | A | | | | | | |
| | Maintenance of General Equipment | | B | C | | | | |
| 468 | Maintenance of General Store Equipment | A | | | | | | |
| 469 | Maintenance of General Stable Equipment | A | | | | | | |
| 470 | Maintenance of General Garage Equipment | A | | | | | | |
| 471 | Maintenance of General Shop Equipment | A | | | | | | |
| 472 | Maintenance of General Laboratory Equipment | A | | | | | | |
| 473 | Maintenance of General Telephone and Telegraph System | A | | | | | | |
| 474 | Maintenance of other General Equipment | A | | | | | | |
| 475 | Depreciation | A | B | C | | 53 | 629 | 00 |
| 476 | Extraordinary Depreciation | A | B | C | | | | |
| 477 | Amortization of Franchises, Patent Rights and Licenses | A | B | C | | | | |
| 478 | Amortization of Natural Gas Rights and Leases Page Line | A | B | C | | 11 | 708 | 00 |
| 479 | Joint Operating Expenses Transferred | A | B | C | | | | |
| | Total Other General Expenses | | | | | 69 | 921 | 38 |
| | RECAPITULATION OF OPERATING EXPENSES: | | | | | | | |
| | A. Production Expenses | A | B | C | | | | |
| | B. Natural Gas Produced by Others | A | B | C | | 99 | 114 | 56 |
| | C. Transmission Expenses | A | B | C | | | | |
| | D. Distribution Expenses | A | B | C | | 12 | 807 | 01 |
| | E. Utilization Expenses | A | B | C | | | | |
| | F. Commercial Expenses | A | B | C | | 10 | 126 | 43 |
| | G. New Business Expenses | A | B | C | | 2 | 223 | 85 |
| | H. Administrative Expenses | A | B | C | | 11 | 769 | 48 |
| | I. Other General Expenses | A | B | C | | 69 | 921 | 38 |
| | Grand Total Operating Expenses | | | | | 206 | 611 | 31 |

408 to 412

## ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—NON-OPERATING REVENUE AND EXPENSE ACCOUNTS



| ACCOUNT. | CLASS. | | | AMOUNT. | | | | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| **NON-OPERATING REVENUE ACCOUNTS:** | | | | | | | | |
| 1. Merchandise Sales | A | B | C | | 44 | 214 | 69 | |
| 2. Jobbing Work Revenue | A | B | C | | 5 | 252 | 51 | |
| 3. Rents from Lease of Public Utility Properties—Page 42 | A | B | C | | | | | |
| 4. Rents from Lease of Other Properties—Page 42 | A | B | C | | | | | |
| 5. Joint Facility Rent | A | B | C | | | | | |
| 6. Interest from Investment Securities | A | B | C | | | | | |
| 7. Interest from Other Sources | A | B | C | | | 441 | 23 | |
| 8. Dividends on Investment Securities | A | B | C | | | | | |
| 9. Sinking Fund Revenues | A | B | C | | | | | |
| 10. Depreciation Fund Revenues | A | B | C | | | | | |
| 11. Insurance and Other Reserve Fund Revenues | A | B | C | | | | | |
| 12. Profit from Operations of Others—Page 42 | A | B | C | | | | | |
| 13. Sub-Utility Revenues—Page 42 | A | B | C | | | | | |
| 14. Oil Revenue | A | B | C | | | | | |
| 15. Gasoline Revenue | A | B | C | | | | | |
| 16. Other Non-Operating Revenues | A | B | C | | 4 | 686 | 43 | |
| Total Revenues (Carry to page 29) | | | | | 54 | 594 | 86 | |
| **NON-OPERATING EXPENSE ACCOUNTS:** | | | | | | | | |
| 1. Merchandise Sales Expense | A | B | C | | 48 | 263 | 62 | |
| 2. Jobbing Work Expense | A | B | C | | 4 | 044 | 77 | |
| 3. Lease of Public Utility Properties Expense | A | B | C | | | | | |
| 4. Lease of Other Properties Expense | A | B | C | | | | | |
| 5. Interest Expense | A | B | C | | | | | |
| 6. Dividend Expense | A | B | C | | | | | |
| 7. Expense of Procuring Profits from Operations of Others | A | B | C | | | | | |
| 8. Sub-Utility Expense—Page 42 | A | B | C | | | | | |
| 9. Non-Operating Taxes | A | B | C | | | | | |
| 10. Uncollectible Non-Operating Revenues | A | B | C | | | | | |
| 11. Oil Expense | A | B | C | | | | | |
| 12. Gasoline Expense | A | B | C | | | | | |
| 13. Other Non-Operating Expense | A | B | C | | 2 | 509 | 00 | |
| Total Expenses (Carry to page 29) | | | | | 55 | 819 | 39 | |

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## SUB-UTILITY AND OUTSIDE OPERATIONS

If any Public Utility service is conducted other than that of Artificial Gas, Natural Gas or Electric Light, show Revenues and Expenses of such Sub-Utility hereunder.

| CLASS OF OPERATION. | GROSS REVENUE | EXPENSE | NET REVENUE OR DEFICIT. |
|---|---|---|---|
| None | | | |
| TOTAL, | | | |

## RENT REVENUES FROM LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

| DESCRIPTION OF PROPERTY | | Name of present leaseholder. | Rent accrued during year. |
|---|---|---|---|
| Name. | Location. | | |
| None | | | |
| | TOTAL, | | |

## PROFITS AND LOSSES FROM OPERATIONS OF OTHERS

| Description of Property Operated. | Location of Property. | Name of operator. | Accrued to Respondent. | |
|---|---|---|---|---|
| | | | Profit. | Loss. |
| None | | | | |
| | | TOTAL, | | |

## TAXES AND ASSESSMENTS



| KIND OF TAX | Taxes assessed or accrued during year. | | Taxes paid during year. | |
|---|---|---|---|---|
| | Ohio. | Indiana. | Ohio. | Indiana. |
| On the Value of Real and Personal Property Used in Operation | 352,602.1 | | 49,985.28 | |
| On Real Property Not Used in Operation | 99.28 | | 1,007.98 | |
| On Gross Receipts—Excise Tax | 10,889.63 | | 10,889.63 | |
| Public Utilities Commission Maintenance | 397.20 | | 397.20 | |
| Domestic Corporation | | | | |
| Franchises | | | | |
| Internal Revenue, U. S. Government | | | | |
| Federal Income and Excess Profits | 10,145.84 | | 9,999.45 | |
| Federal on Bond Coupons | | | | |
| Federal Capital Stock | | | | |
| Miscellaneous (Specify) | | | | |
| Total | 55,482.16 | | 72,280.04 | |

REMARKS

Difference between taxes accrued and taxes paid consists of about $29 accounted for in our account of 1929 taxes.

## RENT DEDUCTIONS FOR LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

| Description of Property. NAME. | Name of lessor or reversioner. | Total rent accrued during year. | Classification of Rent. Guaranteed interest on bonds. | Guaranteed dividends on stocks. | Cash. |
|---|---|---|---|---|---|
| | None | | | | |
| | Total, | | | | |

## ABSTRACTS OF LEASEHOLD CONTRACTS.

Give brief abstracts of the terms and conditions of the leases under which the respondent holds the properties above named, showing particularly (1) the date of the lease, (2) the chain or title and dates of transfers connecting the original lessee with the respondent in case of assignment or subletting, (3) the basis on which the amount of the annual rent is determined, and (4) the date when the lease is to terminate, or, if such date has not yet been determined, the provisions governing its determination.

In lieu of the abstracts here called for, the respondent may file copies of lease agreements and give specific references to copies heretofore filed with the Commission.

None

## FRANCHISES ACQUIRED DURING THE YEAR.

| Name of Original Grantor. | Date of grant. | Term in years. | Territory covered. | Operations covered. | Date of acquisition by respondent. | Date of authorization. | Actual money cost to respondent. | Amount at which carried on Balance Sheet |
|---|---|---|---|---|---|---|---|---|
| | 1920 | | | | | | | |
| Village of Dida | 4-15 | 25 | Corp limit | Sale gas | None | None | | None |
| Village of Cal. Grove | 2-17 | 25 | " | " | " | " | | " |
| Ottawa, Village of | 5-6 | 25 | " | " | " | " | | " |
| Village of Lagrange | 3-21 | 25 | " | " | " | " | | " |
| Village of Bellefontaine | 8-21 | 25 | " | " | " | " | | " |
| Village of Cairo | 10-10 | 25 | " | " | " | " | | " |

If the respondent did not acquire any of the above franchises directly from the original grantor thereof, show the chain of title connecting the original grantor and the respondent.

## APPROPRIATIONS OF INCOME AND SURPLUS TO SINKING AND DEPRECIATION RESERVE FUNDS

| Name and purpose of sinking or depreciation fund. | Amount charged to "Income." | Amount charged to "Corporate surplus." |
|---|---|---|
| None | 0 | |
| TOTAL, | | |

## APPROPRIATIONS OF INCOME AND SURPLUS FOR INVESTMENT IN FIXED CAPITAL

| Name and purpose of appropriation. | Amount charged to "Income." | Amount charged to "Corporate surplus." |
|---|---|---|
| None | | |
| TOTAL, | | |

## OTHER RESERVE FUND APPROPRIATIONS OF INCOME AND SURPLUS

| Purpose of appropriation. | Amount charged to "Income." | Amount charged to "Corporate surplus." |
|---|---|---|
| None | | |
| TOTAL, | | |

Here present statements as follows: 1. All Extensions of the Respondent's Business with Other Companies. 2. All Companies from which the Respondent's Business was Withdrawn. 3. All important Purchases of Equipment for new lines. 4. All other important Physical Changes. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Funded Debt issued. 8. All changes in the respondent's holdings of Stocks and Funded Debt. 9. All other important Financial Changes.

Distribution systems were installed in Sds. Grove, Ottawa, Leipsic and Bluffton in accordance with franchises granted as shown on page 44.

Gas is supplied through a newly constructed gas transmission line running from the plant located at Lima, Ohio

CONTRACTS, AGREEMENTS, ETC., WITHIN OHIO.

Here give a concise statement of all Contracts, Agreements, etc., with other Companies or persons, concerning the conduct of the business of the respondent, which became effective during the year covered by this report.

*1. If any gas purchased from other gas companies during year, state:

| Name of Company. | Number Cubic Feet | Price per M. | Amount Paid. |
|---|---|---|---|
| The Ohio Fuel Gas Co. | 197 481 845 | 55¢ | 108,614.99 |

2. Number cubic feet gas produced during year: (a) Ohio, 250,984,000
(b) Entire Company,

3. Number cubic feet gas distributed during year in Ohio:

| | |
|---|---|
| (a) Domestic and Commercial Sales, | 361 550 600 |
| (b) Sales to factories and industries, | 26 687 200 |
| (c) Public sales (municipalities, etc.) | 1 357 300 |
| (d) Miscellaneous gas sales, | |
| (e) Sales to other gas companies, | 7 899 000 |
| Total cubic feet distributed | 297 494 100 |

*4. If any gas sold to other gas utility companies during year, state:

| Name of Company. | Number Cubic Feet. | Price per M. | Amount Received. |
|---|---|---|---|
| The Dolphos Gas Co. | 7,899,000 | 51¢ | 4 028.49 |

5. Number cubic feet gas brought into Ohio,

none

6. Number cubic feet gas sold outside of Ohio,

none

7. State kind of gas supplied and process of manufacture, Carburetted water gas produced and mixed with natural gas distributed to customers in Lima, Columbus Grove, Ottawa, Leipsic and Bluffton. Other localities furnished with straight natural gas.

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 4.

1. Number of gas wells owned: (a) Ohio, None
(b) Entire Company,

2. Number of gas wells leased and names of lessors, None

3. Number of acres under lease in Ohio at close of year, None

*4. If any gas purchased from other companies during year, state:

| Name of Company. | Number Cubic Feet. | Price per M. | Amount Paid |
|---|---|---|---|
| The Ohio Fuel Gas Co. | 180 299 155 | 55¢ | $99,164.56 |

5. Number cubic feet gas produced during year: (a) Ohio, None
(b) Entire Company,

6. Number cubic feet gas distributed during year in Ohio:

| | |
|---|---|
| (a) Domestic and commercial sales, | 145, 581 100 |
| (b) Sales to factories and industries, | 6 554 600 |
| (c) Public sales (municipalities, etc.), | 807 300 |
| (d) Miscellaneous gas sales, | |
| (e) Sales to other gas companies, | |
| Total cubic feet distributed, | 152943 00 |

*7. If any gas sold to other gas utility companies during year, state:

| Name of Company. | Number Cubic Feet. | Price per M. | Amount Received. |
|---|---|---|---|
| None | | | |

8. Number cubic feet gas brought into Ohio, None

9. Number cubic feet gas sold outside of Ohio, None

10. Number of gallons of gasoline produced during year, None

| 11. Number new wells drilled during year: | Productive | Non-Productive | Total. |
|---|---|---|---|
| (a) Ohio, | None | | |
| (b) Entire Company, | | | |

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 5.

1. Number of Stations:

2. Capacity of such station in K. W. hours:
   (a) A. C.
   (b) D. C.
   Total capacity

3. Transmission voltage,

4. Distribution voltage,

*5. If any current purchased from other companies during year, state:

| Name of Company. | Number K. W. hours. | Price per K. W. hour. | Amount paid. |
|---|---|---|---|
| Not applicable | | | |

6. Number of K. W. hours produced during year. (a) Ohio
   (b) Entire Company

7. Number of K. W. hours distributed during year in Ohio:
   (a) Domestic and commercial sales,
   (b) Sales to factories and industries,
   (c) Public sales (municipalities, etc.)
   (d) Miscellaneous electric sales,
   (e) Sales to other electric companies,
   Total K. W. hours distributed,

*8 If any current sold to other electric utility companies during year, state:

| Name of Company. | Number K. W. hours. | Price per K. W. hour. | Amount Received. |
|---|---|---|---|
| | | | |

9. Number of meter customers.

10. Number of Flat Rate customers.

11. Is current furnished for light during day time?

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 4.

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## STATEMENT OF INTRASTATE GROSS EARNINGS FOR OHIO FOR THE YEAR COVERED BY THIS REPORT

("Intrastate" means from one point in Ohio to another point in Ohio, or wholly within Ohio.)

Attention is called to Section 606 of the General Code of Ohio, which reads as follows:

---

Sec. 606. For the purpose of maintaining the department of public utilities commission of Ohio, including the payment of salaries, traveling expenses, printing, rent, light, heat, water, telephones and all other overhead expenses, and the exercise of police supervision of railroads and public utilities of the state by it, a sum not exceeding two hundred thousand dollars each year shall be apportioned among and assessed upon the railroads and public utilities within the state, by the commission, in proportion to the intrastate gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are made.

On or before the first day of August next following, the commission shall certify to the auditor of state the amount of such assessment apportioned by it to each railroad and public utility and he shall certify such amount to the treasurer of state, who shall collect and pay the same into the state treasury to the credit of a special fund for the maintenance of the department of such public utilities commission.

---

To The Public Utilities Commission of Ohio:

For the uses and purposes designated in Section 606 of the General Code of Ohio:

We, the undersigned, Emmett R. Curtiss, President,

and T. L. Pringle, Asst Secretary,

of West Ohio Gas Company
(Full name of respondent)

on our oath do severally say that the amount of Intrastate Gross Earnings for the State of Ohio, for the year covered by this report, is $ 775,934.93 ; that the same has been prepared under our direction from the original books, papers, and records of said company; that we have carefully examined the same, and declare the same to be a complete and correct statement in respect to each and every matter which should be included in Intrastate Gross Earnings, during the period for which said return is made, to the best of our knowledge, information and belief.

Corporate Seal

Emmett R. Curtiss
President.

T. L. Pringle
Secretary.

Subscribed and Sworn to before me
this 28th day of July, 1921.

H O Bentley
Notary Public

Notary seal

## VERIFICATION.

The foregoing report must be verified by the oath of the officer having control of the accounting of the respondent. It should be verified, also, by the oath of the president or other chief officer of the respondent, unless the respondent states on the last preceding page of this report that such chief officer has no control over the accounting of the respondent. The oath required may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

### OATH.

(To be made by the officer having control of the accounting of the respondent.)

State of Ohio }
County of Allen } ss.

F. L. Pringle (Insert here the official title of the affiant) makes oath and says that he is Asst Secy (Insert here the official title of the affiant)

of West Ohio Gas Company (Insert here the exact legal title or name of the respondent)

that it is his duty to have supervision over the books of account of the respondent and to control the manner in which such books are kept; that he knows that such books have, during the period covered by the foregoing report, been kept in good faith in accordance with the accounting and other orders of the Public Utilities Commission, effective during the said period; that he has carefully examined the said report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of account and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent during the period of time from and including Jan. 1st, 1930, to and including Dec. 31st, 1930

F. L. Pringle (Signature of affiant)

Subscribed and sworn to before me, a notary public, in and for the State and county above named, this 28th day of Feb, 1931

My commission expires Aug 8th, 1932 notary seal

H O Bentley (Signature of officer authorized to administer oath)

### SUPPLEMENTAL OATH.

(By the president or other chief officer of the respondent.)

State of Ohio }
County of Allen } ss.

Emmett R Curtiss (Insert here the name of the affiant) makes oath and says that he is President (Insert here the official title of the affiant)

of West Ohio Gas Company (Insert here the exact legal title or name of the respondent)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent during the period of time from and including Jan. 1st, 1930, to and including Dec. 31st, 1930

Emmett R Curtiss (Signature of affiant)

Subscribed and sworn to before me, a notary public, in and for the State and county above named, this 28th day of Feb, 1931

My commission expires Aug 8th 1932 notary seal

H O Bentley (Signature of officer authorized to administer oath)

[fol. 424] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 23, 1934

Comes now the appellant, West Ohio Gas Company, and adopts its assignments of errors as its statement of the points to be relied upon.

And appellant further states that only the following parts of the record, as filed in this court, are deemed necessary to be printed by the Clerk for the hearing of the case:

| Title of paper | Record pages |
|---|---|
| 1. Petition in Error filed April 1, 1933 by West Ohio Gas Company, plaintiff in in error | 2– 18 |
| 2. Opinion of the Supreme Court of Ohio, dated May 16, 1934 | 19– 44 |
| 3. Petition for Rehearing filed by West Ohio Gas Company on May 29, 1934 | 45– 61 |
| 4. A copy of all docket and all journal entries in the above entitled cause (including entries as to denial of petition for rehearing and as to mandate) appearing on the records in your office | 62– 65 |
| 5. Petition for Appeal, Assignment of Errors and Prayer for Reversal filed June 15, 1934 by West Ohio Gas Gas Company | 66– 74 |
| 6. Statement as to Jurisdiction on Appeal filed June 15, 1934 by West Ohio Gas Company. (To be printed separately) | 75– 82 |
| [fol. 425] | |
| 7. Order allowing Appeal signed by the chief justice of the Supreme Court of Ohio, dated and filed on June 15, 1934 | 83– 84 |
| 8. Citation and proof of service filed June 15, 1934 | 91 |

| Title of paper | Record pages |
|---|---|
| 9. Service of papers under Rule 12 of the Supreme Court of the United States and acknowledgment of service by attorney general of Ohio, attorney for The Public Utilities Commission of Ohio, defendant in error, filed June 15, 1934 | 92– 93 |
| 10. Order Granting Application for Supersedeas, signed by the Chief Justice of the Supreme Court of Ohio, dated and filed June 15, 1934 | 94– 96 |
| 11. Order transmitting certain original exhibits | 108 |
| 12. Complaint and appeal from rates for gas utility service in the city of Kenton filed with The Public Utilities Commission of Ohio by West Ohio Gas Company as cause No. 5666 on August 16, 1929 | 109–122 |
| 13. Finding and order, entered September 15, 1931, fixing tentative valuation of the property used and useful by West Ohio Gas Company, in rendering gas utility service in Kenton, Ohio | 123–125 |
| 14. Finding and order fixing final valuation of said property, entered January 27, 1932 | 132–134 |
| 15. Order of The Public Utilities Commission of Ohio, dated March 8, 1933, placing in evidence the annual reports of West Ohio Gas Company filed with said Commission for 1928, 1929 and 1930 | 135 |
| 16. Order of The Public Utilities Commission of Ohio, dated March 10, 1933, fixing rates for gas utility service within the city of Kenton for the period from on or about August 16, 1929 to February 16, 1933 | 136–138 |
| 17. Opinion of The Public Utilities Commission of Ohio handed down in connection with order fixing said rates, dated March 10, 1933 | 139–146 |

| Title of paper | Record pages |
|---|---|
| 18. Petition for Rehearing from said order fixing rates, filed with The Public Utilities Commission of Ohio by West Ohio Gas Company on March 18, 1933 | 147–158 |
| 19. Order of The Public Utilities Commission of Ohio denying Petition for Rehearing entered on March 22, 1933 | 159 |
| [fol. 426] | |
| 20. Order of The Public Utilities Commission of Ohio directing the transmittal of papers in said cause No. 5666 to the Clerk of the Supreme Court of Ohio, entered April 25, 1933, and copy of all docket entries on the docket of The Public Utilities Commission of Ohio in said appeal from said rate ordinance | 160–166 |
| 21. All of the stenographic transcript of the proceedings and testimony taken before The Public Utilities Commission of Ohio, which has, under the præcipes for transcript filed in this appeal, been included in the transcript of record in this appeal | 167–235 |
| 22. The following exhibits and documents offered and introduced before The Public Utilities Commission of Ohio: | |
| (1) Exhibits and documents introduced by the West Ohio Gas Company and designated as follows: | |
| Company Exhibit No. 2 | 236 |
| Company Exhibit No. 102 | 237–254 |
| Company Exhibit No. 103 | 255–256 |
| (2) Exhibits and documents introduced by The Public Utilities Commission of Ohio and designated as follows: | |
| Commission Exhibit No. 1 | 257 |
| Commission Exhibit No. 2 | 258–259 |

| Title of paper | Record pages |
|---|---|
| The following pages of Commission Exhibit 1 of March 8, 1933 (Annual report of appellant to appellee for the year 1928): both sides of the front cover page; pages 1 to 8, both inclusive; pages 10 to 16, both inclusive; pages 19 to 36, both inclusive; and pages 41 to 51, both inclusive..... | (Furnished as an original exhibit) |
| The following pages of Commission Exhibit 2 of March 8, 1933 (Annual report of appellant to appellee for the year 1929): both sides of the front cover page; pages 1 to 8, both inclusive; pages 10 to 16, both inclusive; pages 19 to 36, both inclusive; and pages 41 to 51, both inclusive..... | (Furnished as an original exhibit) |
| The following pages of Commission Exhibit 3 of March 8, 1933 (Annual report of appellant to appellee for the year 1930): both sides of the front cover page; pages 1 to 8, both inclusive; pages 10 to 16, both inclusive; pages 19 to 36, both inclusive; and pages 41 to 51, both inclusive..... | (Furnished as an original exhibit) |

[fols. 427 & 428]

23. This statement of points to be relied upon and designation of the parts of the record to be printed..... .....

Dated this 21st day of July, A. D. 1934.

Chas. C. Marshall, Harry O. Bentley, Edmond W. Hebel, Attorneys for West Ohio Gas Company, Appellant.

Service of a copy of the foregoing "Statement of Points to be Relied Upon and Designation of the Parts of the

Record to be Printed" is hereby acknowledged this 21st day of July, A. D. 1934.

John W. Bricker, Attorney General of Ohio; Donald C. Power, Assistant Attorney General of Ohio, Attorneys for The Public Utilities Commission of Ohio, Appellee.

[fol. 429] [File endorsement omitted.]

Endorsed on cover: File No. 38,841. Ohio Supreme Court. Term No. 213. West Ohio Gas Company, appellant, vs. The Public Utilities Commission of Ohio. Filed July 23, 1934. File No. 213, O. T., 1934.

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## Table of Cases Cited.


| | |
|---|---|
| Atlantic Coast Line Railroad Company v. City of Goldsboro, North Carolina, 232 U. S. 548 | 8 |
| Bluefield Waterworks & Improvement Company v. Public Service Commission of the State of West Virginia et al., 262 U. S. 679 | 8 |
| Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio et al., 54 Sup. Ct. Rep. 763 | 8 |
| Dayton Power & Light Company v. Public Utilities Commission of Ohio et al., 54 Sup. Ct. Rep. 647 | 8 |
| Ohio Utilities Company v. Public Utilities Commission of Ohio, 267 U. S. 359 | 8 |
| St. Louis, Iron Mountain & Southern Railway Company v. Starbird, Administrator of Miller, 243 U. S. 592 | 8 |
| Southwestern Bell Telephone Company v. Public Service Commission of Missouri et al., 262 U. S. 276 | 8 |
| United Railways and Electric Company of Baltimore v. West et al., 280 U. S. 234 | 8 |
| Williams v. Bruffy, 96 U. S. 176 | 8 |
| Young, Ex Parte, 209 U. S. 123 | 8 |


## Statutes Cited.


| | |
|---|---|
| Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54 (U. S. C. Sup. VI, Title 28, Section 861a) | 2 |
| Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466 (U. S. C. Sup. VI, Title 28, Section 861b) | 2 |
| Constitution of the United States, 14th Amendment | 6 |
| General Code of Ohio, Section 544 (Volume 103 Ohio Laws, page 815, Section 33) | 4 |
| General Code of Ohio, Section 545 (Volume 103 Ohio Laws, page 815, Section 34) | 4 |
| General Code of Ohio, Section 549 (Volume 103 Ohio Laws, page 816, Section 38) | 4, 5 |
| Judicial Code, Section 237a, Chapter 229, 43 Stat. 936 (28 U. S. C. 344a) | 2, 9 |

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1934**

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# No. 213

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WEST OHIO GAS COMPANY,

*Appellant,*

*vs.*

THE PUBLIC UTILITIES COMMISSION OF OHIO.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO.

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## STATEMENT AS TO JURISDICTION ON APPEAL.

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MAY IT PLEASE THE COURT:

Pursuant to Rule 12 of the Supreme Court of the United States, West Ohio Gas Company, appellant in this appeal from a decision of the Supreme Court of Ohio made in the above cause, respectfully shows the following in support of the jurisdiction of the Supreme Court of the United States to review the aforesaid cause on appeal:

## A.

### Statutory Provisions Sustaining Jurisdiction.

Chapter 14, 45 Stat. 54 of the Acts of Congress of January 31, 1928 (U. S. C. Sup. VI, Title 28 "Judicial Code and Judiciary", Sec. 861a), provides:

> "The writ of error in cases, civil and criminal is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

Chapter 440, 45 Stat. 466 of the Acts of Congress of April 26, 1928 (U. S. C. Sup. VI, Title 28 "Judicial Code and Judiciary", Sec. 861b) provides:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

Chapter 229, 43 Stat. 936 of the Acts of Congress amends subsection (a) of Section 237 of the original Judicial Code, so that the same provides as follows (U. S. C., Title 28 "Judicial Code and Judiciary", Sec. 344(a) ):

> "(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall

have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

B.

**Date of Judgment and of Petition for Appeal.**

NOTE:

Paragraph 2 of Rule 10 of the Supreme Court of the United States provides that the clerk of the court from which an appeal to the Supreme Court of the United States may be allowed shall make and submit to that Court a certified copy of the material parts of the record.

Rule 12 of the Supreme Court of the United States, as amended, now requires the presentation to the Judge to whom the application for allowance of the appeal is made, of a statement in typewritten form of the grounds of jurisdiction.

It is assumed that where the Application for Appeal is made to the Chief Justice of the Court possessing the record, the transcript of the record need not be made up until or unless the appeal is allowed. The appropriate pages of the record are therefore left blank, and Appellant undertakes to supply the appropriate pages for insertion therein prior to the printing of the record for the use of the Supreme Court.

The decision of the Supreme Court of Ohio was announced by written opinion dated May 16, 1934 (R. 19-44). A petition for rehearing was filed in said court on May 29, 1934, within the time fixed by the rules of said court (R. 45-61, 63; Rule No. XX of said court). Said petition for

rehearing was denied by said court on June 6, 1934 (R. 63, 64).

The petition for appeal was filed in the office of the clerk of the Supreme Court of Ohio and allowed by the chief justice of said court on June 15, 1934 (R. 66-74).

C.

**Nature of Case and Ruling Below.**

The case in the Supreme Court of Ohio was a proceeding in error under sections 544, 545 and 549 of the General Code of Ohio, from a final order made by appellee, on March 10, 1933, fixing a rate to be charged by appellant for gas utility service rendered within the city of Kenton, Ohio, for a period from on or about August 16, 1929, to February 16, 1933.

The Supreme Court of Ohio is the highest and the only court in Ohio in which a decision in the case may be had.

Said sections 544, 545 and 549 of said General Code of Ohio provide as follows:

Section 544 (Volume 103, Ohio Laws, page 815, Section 33):

> "A final order made by the commission shall be reversed, vacated or modified by the supreme court, on a petition in error, if upon consideration of the record such court is of the opinion that such order was unlawful or unreasonable."

Section 545 (Volume 103, Ohio Laws, page 815, Section 34):

> "The proceeding to obtain such reversal, vacation or modification shall be by petition in error, filed in the supreme court, by any party to the proceeding before the commission, against the public utilities commission of Ohio, setting forth the errors complained of. Thereupon unless the same is duly waived a summons shall issue and be served, as in other cases, upon

> the chairman of the commission, or, in the event of his absence, upon any member of the commission, or by leaving a copy at the office of the commission at the city of Columbus. The court may permit any interested party to intervene by cross-petition in error."

Section 549 (Volume 103, Ohio Laws, page 816, Section 38):

> "No court other than the supreme court shall have power to review, suspend or delay any order made by the commission, or enjoin, restrain or interfere with the commission or any member thereof in the performance of official duties. Nor shall the writ of mandamus be issued against the commission or any member thereof by any court other than the supreme court."

The said final order of appellee was made in a proceeding in which appellant had complained of, and appealed from, an ordinance of the city of Kenton, Ohio, approved July 16, 1929, fixing the rate to be charged by appellant for gas utility service rendered by it within said city of Kenton, Ohio, for a period of two years from and after on or about August 16, 1929 (R. 109-112). Said final order of appellee found said ordinance rate to be unjust and unreasonable, but fixed a rate to be charged for said gas utility service during said ordinance period and thereafter until February 16, 1933, that was substantially lower than the rate that was being charged by appellant and had been charged by it during said time (R. 136-138, 113). Said final order was accompanied by an opinion of appellee setting forth its reasons in support of said order (R. 139-146).

Subsequent to the entry by appellee of said final order fixing said rates, appellant on March 18, 1933, filed with appellee an application for rehearing on the grounds: That the rates fixed by the said final order were unlawful and unreasonable and confiscatory of the property of appellant devoted to the public service, and therefore said final order

impinged upon rights guaranteed appellant by, and was invalid under, the Fourteenth Amendment of the Constitution of the United States; and that because said final order was not founded upon the evidence, because it disregarded the evidence and because it was based upon matters not properly in evidence, appellant had been denied the due process of law and equal protection of the laws to which appellant was entitled under the Fourteenth Amendment of the Constitution of the United States. In and by said application for rehearing, appellant also set forth its claim that appellee had no power in said proceedings to fix rates for any period beyond the term provided in said ordinance appealed from. Said application for rehearing set out specifically the basis of each objection by appellant to said final order. In and by said application for rehearing appellant asked that, if said final order was to affect rates for a period beyond the said ordinance period, appellant should be permitted to show in evidence the facts as to its decreased revenues and net earnings from gas utility service in Kenton during 1932 and between January 1 and February 16, 1933; and that it be permitted to show the exact effect of the application of the rates fixed by appellee upon appellant's revenues and net earnings from said gas utility service if applied during said ordinance period and thereafter to February 16, 1933 (R. 147-158).

Said application for rehearing was required by the laws of the State of Ohio as a condition precedent to a review by the Supreme Court of Ohio of the said final order of appellee. Said application for rehearing was denied on March 22, 1933 (R. 159).

Upon such denial appellant filed in the Supreme Court of Ohio on April 1, 1933, a petition in error claiming that, for reasons which were therein specifically set out and which were the same as those set out in said application for rehearing filed with appellee as aforestated, said final

order of appellee was unlawful and unreasonable and confiscatory of the property of appellant devoted to the public service, and impinged upon rights guaranteed appellant by, and was invalid under, the Fourteenth Amendment of the Constitution of the United States, and that because said final order appealed from was not founded upon the evidence, because it was made in disregard of the evidence, and because it was based upon matters not properly in evidence, appellant had been denied the due process of law and the equal protection of the laws to which it was entitled under said Fourteenth Amendment to the Constitution of the United States. In its said petition in error, appellant also set forth its claim that appellee had no power in said proceedings to fix rates for any period beyond the term provided in said ordinance appealed from. In its said petition in error, appellant further claimed and asserted that because appellee had denied appellant the rehearing duly prayed for, had, although it assumed to fix a rate for a period longer than the period named in said ordinance appealed from, denied appellant an opportunity to show the facts as to its revenues and net earnings from said gas utility service in Kenton during the period subsequent to the closing of the taking of testimony in the proceedings before appellee, and had denied appellant an opportunity to show the exact effect of the rates fixed by appellee upon appellant's revenues and net earnings from said gas utility service for the period during which said rates were ordered to be made effective, appellant had been denied the due process of law and the equal protection of the laws to which it was entitled under the Fourteenth Amendment to the Constitution of the United States (R. 2-18).

The proceedings in error filed by appellant were docketed in said Supreme Court of Ohio as cause No. 24105.

The question of the invalidity of said order on said grounds above referred to was presented and submitted to the Supreme Court of Ohio in both written and oral argument.

The judgment of the Supreme Court of Ohio rendered on May 16, 1934, as aforestated, was in favor of the validity of said final order of appellee (R. 64).

## D.

### Cases Believed to Sustain Jurisdiction.

The following decisions are believed to sustain jurisdiction of this appeal:

*Bluefield Waterworks & Improvement Company* v. *Public Service Commission of the State of West Virginia et al.*, 262 U. S. 679;

*Southwestern Bell Telephone Company* v. *Public Service Commission of Missouri et al.*, 262 U. S. 276;

*Ohio Utilities Company* v. *Public Utilities Commission of Ohio*, 267 U. S. 359;

*United Railways and Electric Company of Baltimore* v. *West et al.*, 280 U. S. 234;

*Dayton Power & Light Company* v. *Public Utilities Commission of Ohio*, — U. S. —, 54 Sup. Ct. Rep. 647;

*Columbus Gas and Fuel Company* v. *Public Utilities Commission of Ohio et al.*, — U. S. —, 54 Sup. Ct. Rep. 763;

*Williams* v. *Bruffy*, 96 U. S. 176, 182-3;

*Ex parte Young*, 209 U. S. 123, 144;

*Atlantic Coast Line Railroad Company* v. *City of Goldsboro, North Carolina*, 232 U. S. 548, 555;

*St. Louis, Iron Mountain & Southern Railway Company* v. *Starbird, Administrator of Miller*, 243 U. S. 592.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of section 237 of the Judicial Code, as amended by the Act of February 13, 1925 (now section 344 (a) of Title 28 of the U. S. C.), and as further amended or modified by the Acts of January 31, 1928, and April 26, 1928 (now sections 861-a and 861-b of Title 28 of U. S. C., Sup. VI).

Respectfully submitted,

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H. O. BENTLEY,
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*Attorneys for West Ohio Gas Company,*
*Appellant.*

Received a copy of this statement as to jurisdiction on an appeal this 15th day of June, 1934.

JOHN W. BRICKER,
*Attorney General of Ohio,*
DONALD C. POWER,
*Assistant Attorney General of Ohio,*
*Attorneys for The Public Utilities*
*Commission of Ohio,*
*Appellee.*

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1934.

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**No. 213**

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WEST OHIO GAS COMPANY, AN OHIO CORPORATION,
*Appellant,*

*v.*

THE PUBLIC UTILITIES COMMISSION OF OHIO,
*Appellee.*

---

APPEAL FROM THE SUPREME COURT OF OHIO.

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## BRIEF AND ARGUMENT FOR APPELLANT.

---

*May It Please the Court:**

### OPINIONS BELOW.

This case comes up on an appeal from a judgment** of the Supreme Court of Ohio affirming a final order of appellee fixing rates to be charged by appellant for gas

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* NOTE: Wherever throughout this Brief and Argument italicized words appear within quotations, the italics are ours unless otherwise noted.

** NOTE: So termed by the state supreme court in its mandate.

utility service within the city of Kenton, Ohio, during the three and one-half year period commencing about August 16, 1929.

The opinion of the court below appears on pages 14-35 of the printed record in this court. It is reported in 128 Ohio State 301 (1934).

The final order of appellee appears on pages 83-6 of the printed record. The opinion of appellee, accompanying said final order, appears on pages 86-94 of the printed record.

## JURISDICTION.

A statement as to jurisdiction has been filed by appellant and separately printed, pursuant to Rule 12 of this court. The fact that section 237 of the Judicial Code confers jurisdiction upon this court is not controverted. Probable jurisdiction was noted by this court on October 8, 1934.

## STATEMENT OF THE CASE.

The rate order of appellee, which is challenged by these proceedings, was entered March 10, 1933, and fixed rates to be charged by appellant for gas utility service rendered by it to consumers within the city of Kenton, Ohio, for a three and one-half year period commencing on or about August 16, 1929. This rate order drastically reduces the rates for gas utility service that have been charged in Kenton.

While we shall endeavor to eliminate all non-essentials from our statement of the facts, we shall try to give the court a complete picture of all facts that might be deemed relevant to the issues to be decided. In a case of this kind, we believe it is essential that the court should have this at the outset of its consideration of the problems involved.

Throughout this statement, brief and argument, appellant West Ohio Gas Company will generally be referred to as the "company"; appellee The Public Utilities Commission of Ohio will generally be referred to as the "commission"; and the city of Kenton, Ohio, a municipal corporation, will generally be referred to either as the "city" or as "Kenton".

**History of Proceedings.**

On July 16, 1929, the city, acting under the provisions of sections 614-44, 3982 and 3983 of the General Code of Ohio, passed an ordinance No. 663 purporting to fix and regulate the maximum price which the company should be permitted to charge for gas utility service furnished to consumers within the city *during a period of two years* from and after August 16, 1929. These rates were as follows:

| | |
|---|---|
| First 400 cubic feet of gas or less used per month | 90c |
| Next 2,600 cubic feet used per month. | 75c per thousand cubic feet |
| Next 7,000 cubic feet used per month. | 65c per thousand cubic feet |
| All over 10,000 cubic feet used per month | 60c per thousand cubic feet |

On August 16, 1929, the company filed with the commission as Cause No. 5666, its appeal from said ordinance, and elected, pending the determination of this appeal, to charge the schedule of rates in force and effect on the date of the passage of the ordinance, all as authorized and provided for by sections 614-44, 614-45 and 614-46 of the General Code of Ohio.

The rates which the company was then charging, and has since continued to charge, are the following:

*General.*

| | |
|---|---|
| First 400 cubic feet or gas or less used per month | $1.25 |
| Next 2,600 cubic feet used per month. | 1.10 per thousand cubic feet |
| Next 7,000 cubic feet used per month. | 1.00 per thousand cubic feet |
| All over 10,000 cubic feet used per month | .75 per thousand cubic feet |

*Optional Rate for House Heating Customers During Months of September to May, Both Inclusive.*

| | |
|---|---|
| For the first 1,000 cubic feet of gas or less used per month | $3.00 |
| All gas used in excess of 1,000 cubic feet per month | .75 per thousand cubic feet |

*Penalty for Nonpayment of Bills.*

| | |
|---|---|
| Additional charge for nonpayment of bills within 10 days after due | .10 per thousand cubic feet |

These rates (except the optional rate for house heating customers, which was filed later) were the rates which were authorized under an order entered on January 31, 1927 by the commission in advance utility rate proceeding No. 245, after it had completed a valuation of the company's property devoted to the public service and a study of the estimated revenues to be derived therefrom and expenses to be incurred therein. (R. 118, 130-1).

After the filing of said appeal the commission proceeded to hold hearings in cause No. 5666 as to the valuation of the property of the company used and useful in rendering

gas utility service within Kenton. The initial hearing was held on April 3, 1930, and the company then presented its evidence as to the value of its property. Subsequent hearings were held from time to time, the commission presenting a valuation, but the city introducing no evidence as to value. On January 27, 1932, the commission entered a final valuation order in said cause finding that the value as of August 15, 1929 of the property of the company so used and useful was $189,856.56. This sum was the exact valuation put on the used and useful physical property by the engineering staff of the commission. (R. 77-83, 128, 176-8). It included no amount whatsoever for going value. (R. 82). The company filed a petition for rehearing as to this final valuation, but that petition was denied. No appeal was taken from the valuation order. The company, upon electing to seek a review of the final rate order of the commission in the state court was precluded, under the Ohio statute, from attacking in that proceedings the unreasonableness of the final valuation order, and was bound before that court by the rate base that had been fixed. (See opinion of state court, 128 Ohio St. 301, 311; R. 23-4.)

After the entry of the final valuation order, the commission proceeded to hold hearings and receive evidence relative to the revenues derived from, the cost of, and the net return earned in, rendering gas utility service to consumers in Kenton. The initial hearing on this phase of the proceedings was held on June 8, 1932. At that time the company introduced its testimony and exhibits as to those matters. Neither the city nor the commission presented any evidence on that phase of the case either at the initial hearing or later.

The case was closed on July 19, 1932. Under date of March 8, 1933, however, and without any notice to the company, the commission entered an order putting in evidence as commission's exhibits numbered 1, 2 and 3, re-

spectively, the annual reports covering the entire operations of the company which had been filed by it with the commission for the calendar years 1928, 1929 and 1930, respectively. Notice of this order was not given the company until the time that it was served with a copy of the final rate order of March 10, 1933.

The commission, when it entered its order as to the annual reports, had in its possession the annual reports of the company for the calendar years 1931 and 1932. It failed to include these reports among those put in evidence, and refused to do so when this was specifically requested by the company. (R. 104, 105).

Under date of March 10, 1933, the commission entered its final rate order in this proceeding. That order was accompanied by a written opinion. The order found that the rates fixed by the Kenton ordinance of July 16, 1929, were insufficient, unjust and unreasonable rates, but fixed rates to be charged for service in Kenton during the ordinance period and a subsequent period extending to February 13, 1933, averaging about 16½% below those that the company had been charging. These rates are as follows:

| | | |
|---|---|---|
| 400 cubic feet of gas or less used per month | $1.00 | |
| Next 2600 cubic feet used per month | .95 | per thousand cubic feet |
| Next 3500 cubic feet used per month | .85 | per thousand cubic feet |
| Next 3500 cubic feet used per month | .80 | per thousand cubic feet |
| Over 10,000 cubic feet used per month | .75 | per thousand cubic feet |
| House Heating as defined by company's schedule on file | .60 | per thousand cubic feet |

The rates fixed were made retroactive to the effective date of the ordinance, which is probably August 16, 1929, the effective date named therein. The commission ordered the company to refund to its customers in Kenton the difference between the amounts actually collected by the company for service during the period for which the rates were made effective and the amount that would have been charged for such service if the rates fixed by the commission had actually been in effect during that time. After careful calculation, the company estimates that the refunds ordered exceed $41,000.00, exclusive of interest.

On March 18, 1933, the company filed with the commission its written application for a rehearing. In addition to pointing out specifically many errors and irregularities that the company believed rendered the order unlawful, the company asked that the commission permit it to show the facts as to its decreased revenues and its net earnings from service in Kenton for the year 1932 and subsequently, that the commission permit it to show the exact effect of the application of the commission rates upon its revenues during the entire period that such rates had been ordered effective by the commission, that the commission base its rate order on the competent evidence in the case, and that the commission either exclude all the annual reports which the company had filed with it or put in evidence the 1931 and 1932 annual reports. By an order entered March 22, 1933, the commission denied these requests and denied the application for rehearing. (R. 95-105).

The company, thereupon, filed, under General Code of Ohio, sections 544-5, its petition in error in the Supreme Court of Ohio, and asked a stay of the commission order until a judicial review of the proceedings could be had.

**The Evidence.**

The record before the commission in this cause consists of extensive oral testimony, nine exhibits introduced by

the company, two exhibits introduced by the city, and six exhibits introduced by the commission. That part of this testimony which is applicable to the question of valuation need not be here considered. In view of the fact that no appeal was taken from the final valuation order and that the company appealed the validity of the final rate order to the state supreme court and not to a federal equity court, it is unnecessary here to review the evidence as to valuation. Under the statute (General Code of Ohio, section 547), the action of the commission on that phase of the controversy is not subject to review in such an appeal.

The company, through its exhibits prepared by its comptroller, Mr. Frank L. Pringle, (since March, 1934, vice-president and general manager) and through oral testimony given by him, showed the facts as to its operations in Kenton during the period affected by the ordinance. This evidence is entirely undisputed. Except for the three annual reports introduced by the commission there is no evidence in this case as to revenues, expenses and earnings other than that introduced by the company.

### Source of Gas Supply.

In Kenton, the company supplies natural gas to its consumers. The company does not control, and never has controlled, any source of natural gas supply. It must obtain natural gas wherever it can secure it on the open market. The gas required is purchased by the company from the Ohio Fuel Gas Company. The contract for such gas was made about the end of 1928, for a term of five years, and at a price of 55c per thousand cubic feet. A copy of this contract is attached as "Exhibit C" to the complaint filed in the appeal to the commission in this case. (R. 71-7). Prior to the time this contract was entered into, the company made earnest efforts to secure natural

gas from other sources, and at a better price, but was unable so to do.

KENTON ACCOUNTING DISTRICT OF THE COMPANY.

The company serves gas to several communities. The company's accounting records are kept in accordance with the uniform classification of accounts for gas utilities prescribed by the Ohio commission. (R. 132). Accounts covering the revenues and expenses from gas utility service are kept by accounting districts. Generally speaking each municipality is a separate accounting district, and this situation is true for Kenton. (R. 130).

THE COMPANY'S REVENUES FROM GAS SERVICE IN KENTON.

These were shown by the company in detail for the twelve-month period ending August 1, 1929, and for the calendar years 1929, 1930 and 1931. (R. 159-75).

The revenue figures submitted by the company were taken from the books of the company, and were undisputed. They showed that from gas utility service in Kenton the company obtained $84,787.36 of revenue during the twelve-month period ending August 1, 1929; $86,220.19 in the calendar year 1929; $80,357.26 in 1930; and but $72,278.21 in 1931. (R. 161).

The company, in order to show the approximate effect of the rates fixed by the Kenton ordinance, determined the month during the years 1929, 1930 and 1931 in which its revenues from Kenton service were closest to the average monthly revenue from such service for that three-year period. That month was March, 1930, in which month the company's revenue under existing rates was $6,643.00. The company analyzed each customer's bill rendered for

that month in order to determine his gas consumption during such month. To this consumption in each case it applied the ordinance rate. The analysis showed $3,603.77 to have been the total revenue that would have been received under the ordinance rates. This showed that the ordinance rates reduced the company's revenues approximately $3,040.00 for the month, or at the rate of $36,480.00 a year. This is a reduction of more than 45% of the total revenue. (R. 139-42).

Neither the city nor the commission offered any evidence as to revenues.

THE COST OF RENDERING GAS SERVICE IN KENTON.

The cost of rendering gas utility service in Kenton was shown by the company for the same periods for which revenues were shown. (R. 159-75). Mr. Frank L. Pringle, comptroller for the company, testified to the fact that the expenses so set forth were those shown on the books of the company, except as to certain adjustments for reserve in amortization of pipeline and reserve for retirement. The nature of these expenses, the basis of allocation for such of them as were a part of expenses incurred by the company as a whole and the propriety of the adjustment of the two items referred to were fully explained by him. He was subject to examination by the commissioners and to cross-examination by counsel for the city. His testimony and the exhibit showed that all expenses which were incurred locally in connection with gas utility service in Kenton were charged directly to that service and no apportionment of expense between communities served was required. Such expense as could not be charged direct but was incurred in common for all districts was apportioned on such basis as the accounting officers of the company deemed most equitable. For example, commercial expense in con-

nection with rendering bills, for the entire company, which in 1931 was incurred in the central office at Lima, was divided on the basis of accounts served. (R. 171). Allocation of that part of general and miscellaneous expense that was a joint expense for the entire company was made on a gross revenue basis. (R. 172-5).

Neither the commission nor the city introduced any evidence as to operating expenses incurred in the Kenton service.

### Rate of Return Necessary.

On this subject the company submitted an exhibit in which it showed the actual cost to the company of moneys for capital purposes raised by the issuance and sale of bonds and preferred stock. (R. 175-6). By agreement with counsel for the city who had been present during the identification of, and testimony as to, a like exhibit introduced in the *Lima* rate case of this company (Commission cause number 5137), that portion of the transcript in the *Lima* rate case that comprised the direct examination on the similar exhibit was made a part of the record in the *Kenton* case. (R. 142-6). Mr. Pringle, who had prepared and who testified as to Company Exhibit 103 (R. 175-6), was submitted for cross-examination thereon by attorneys for Kenton. (R. 146-7).

The issuance of all the securities of the company has been authorized by the commission during or since 1924. The exhibit shows that that portion of the capital of the company which has been obtained by the sale of bonds is actually costing the company 7.07% per annum, and that that portion which has been raised by the sale of preferred stocks is costing 8% per annum. The testimony of Mr. Pringle not only fully explains Company Exhibit 103 (R. 175-6), but also shows the fact that the holders of the com-

pany's securities are scattered throughout the entire country. (R. 142-6).

The company also submitted in evidence the commission rate order in cause number 245, fixing gas rates to be charged by the company in serving consumers in Kenton and entered by the commission on January 31, 1927, wherein the commission found that the rate of return for the company should be at least 8% per annum and that any lower rate would be unreasonable. (R. 130-1).

Neither the city nor the commission offered any evidence as to a fair rate of return for the company.

### The Value of the Company's Property.

The valuation of the property used by the company and useful in rendering gas utility service within the city of Kenton has been fixed by the commission at $189,856.56 in its final valuation order entered in this cause on January 27, 1932. (R. 80-3). The amount fixed is the exact sum recommended by the commission engineering staff. (R. 176-8, 128). The figure represents the cost of reproduction depreciated of the physical property as determined by that staff. Nothing is included for going value. (R. 77-82). No appeal having been taken from this order, it was, under the peculiar provisions of the Ohio law, impossible in the rate appeal to challenge in the state court the insufficiency of the valuation. It is unnecessary, therefore, for us to outline the evidence as to valuation. We desire to point out, however, that we are confident that any analysis of the valuation will clearly show that each item was given a valuation less than a reasonable minimum and that the final result reached is far lower than can be legally justified. The amount of the value allowed cannot be used, as the commission in its order has attempted to suggest, as a justification for allowing an unreasonably low rate of return.

## The Company's Net Earnings from Gas Service in Kenton.

The company's revenues, expenses and net earnings from actual operations in Kenton for the twelve-month period ending August 12, 1929 and for the calendar years 1929, 1930 and 1931 are shown in the record to be as follows (R. 161):

| *Year* | *Revenue* | *Expenses* | *Net Earnings* |
|---|---|---|---|
| Ending August 1, 1929 | $84,787.36 | $70,465.52 | $14,321.84 |
| 1929 | 86,220.19 | 71,923.11 | 14,297.08 |
| 1930 | 80,357.26 | 67,701.65 | 12,655.61 |
| 1931 | 72,278.21 | 61,419.14 | 10,859.07 |

Taking as a measure of the value of the company's property, the valuation fixed by the commission in this case, the rate of return earned during each of the years in question was as follows:

| *Year* | *Property Value* | *Net Earnings* | *Per centum rate of return* |
|---|---|---|---|
| Ending August 1, 1929 | $189,856.56* | $14,321.84 | 7.54% |
| 1929 | 189,856.56 | 14,297.08 | 7.53% |
| 1930 | 189,856.56 | 12,655.61 | 6.66% |
| 1931 | 189,856.56 | 10,859.07 | 5.72% |

Neither the city nor the commission offered any evidence as to the net earnings of the company.

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* Note: Commission opinion, p. 2, states valuation found by it to be $189,844.81. This is erroneous. See valuation order. (R. 82).

### The Annual Reports of the Company.

The annual reports of the company to the commission for the years 1928, 1929, and 1930, which the commission put in evidence on March 8, 1933, are the annual reports of the company as a whole. They were filed pursuant to statutory requirement and commission order. Among other data applicable to the years reported, they disclose, pursuant to printed instructions in the reports,—the number of customers in each community where artificial gas is supplied, the number of customers in each community where natural gas is supplied, the operating expenses by accounts (for the entire company) in connection with the sale of artificial gas, the operating expenses by accounts (for the entire company) in connection with the sale of natural gas, interest paid and dividends declared, and an income statement and balance sheet for the company as a whole. The commission did not put in evidence the annual reports of the company filed for the years 1931 and 1932, and when this fact was called to the attention of the commission and it was requested to include these additional reports, it refused so to do. (R. 104-5).

### The Commission Order and Opinion.

The rates fixed by the commission in this cause compare with existing charges as follows:*

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* Note: House heating rates not included in table. Drastic reduction has been made by the commission order in rates for gas sold for house heating, but as the commission rate is not in a form comparable to the existing schedules of the company covering such service, the rates cannot be compared in the manner above set forth.

| | *Existing Rate* | *Rate Fixed* | *Per centum Reduction* |
|---|---|---|---|
| 400 cubic feet of gas or less per month | $1.25 | $1.00 | 20% |
| Rate per thousand cubic feet for next 2600 cubic feet per month | 1.10 | .95 | 13.6% |
| Rate per thousand cubic feet for next 3500 cubic feet per month | 1.00 | .85 | 15% |
| Rate per thousand cubic feet for next 3500 cubic feet per month | 1.00 | .80 | 20% |
| Rate per thousand cubic feet for all gas over 10,000 cubic feet per month | .75 | .75 | — |
| Penalty per thousand cubic feet for non-payment of bill within ten days after due | .10 | no provision | 100% |

The order provides that the rates fixed by the commission therein are to "remain in force and effect for the period fixed and prescribed by said Ordinance and to and inclusive of the 16th day of February, 1933." They have, therefore, been made retroactive over a period of three years and six months, without regard to the actual effect of the rates in any year during that period. The commission made no analysis of, and paid no attention to, the facts shown by the evidence as to revenue, expenses or net earnings for any of the period subsequent to August, 1929, which was a date *prior* to the effective date of the rate ordinance. The commission further ordered the company to refund to its consumers the difference between the

amounts collected during said period and the sums that would have been collected had the company charged the rates fixed by the order.

The opinion of the commission seeks to justify the order upon the ground that a fair and reasonable return during the ordinance period would be approximately $11,400.00 a year, or at a rate of 6% per annum on the commission's valuation, that the company averaged during the period a return at a greater rate and that it should refund to consumers served in Kenton during said period the net earnings in excess of earnings at said rate.

The evidence showed the revenues derived from Kenton service and the expenses incurred in rendering such service for the twelve-month period ending July 31, 1929 (the year immediately preceding the rate ordinance) and for the calendar years 1929, 1930 and 1931. In making its order the commission disregarded the situation as to all periods except the twelve-month period ending with July 31, 1929.

The evidence showed operating expenses of $70,465.52 for that twelve-month period. In finding net return, the commission reduced these to $59,428.10.* (R. 90). One of the substantial items of expense reduced was general and miscellaneous expenses which the commission attempted to determine on a "customer average" basis. The commission's opinion states that the allowance for this item was $6,556.26. It was recognized by counsel for the commission and by the state supreme court (R. 34) that part of this reduction was due to an error made by the commission in overlooking a portion of the general and miscellaneous expenses and that the sum of $2,069.00 should be added to the $6,556.26. With this correction, the expenses taken into account by the commission amount to

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*NOTE: Total shown by the commission is $59,438.10, an obvious error in addition.

$61,497.10 for the twelve-month period considered. The commission found that the rates fixed by it would produce a gross revenue of $70,850.42 for the said twelve-month period. (R. 92). Subtracting from that revenue the $61,497.10, leaves net earnings of $9,353.32 under the commission's method of determining expenses, or a return of but 4.92% on the rate base.

No consideration was given to the revenues and expenses for any period subsequent to July 31, 1929. The rate ordinance became effective in August, 1929.

The ordinance provided that it was for a two-year period. The commission directed that the rate fixed should be in effect for a three and one-half year period ending February 16, 1933.

### The Judgment and Opinion of the Supreme Court of Ohio.

The opinion of the state supreme court summarizes the disallowances of operating expenses made by the commission and recognizes that the $2,069.00 should be added to the general and miscellaneous expense because of the error in calculations made by the commission. The opinion then states that, if a return be determined on the basis of operating expenses that the commission intended to take into account, more than a reasonable rate of return will be earned under existing rates, and that limiting the return to 6% would not be error "in the light of the times." The opinion sets forth the fact that 6% on the rate base amounts to $11,391.00, but ignores the fact that under the commission rates the net return for the year, on the commission's own method of determining operating expenses, would be but $9,353.32. This amounts to but 4.92% on the rate base.

In its opinion, the court makes no comment on the fact that the commission has not treated with the situation which

existed during any of the months covered by the rate ordinance. Nor did the court independently consider the facts in the record to determine what return would be earned if the rate order were applied to any or all of the period involved in the rate controversy.

In its opinion the court failed to discuss the issue raised by the company that the commission was without statutory authority to fix a rate for a period longer than the two years named in the ordinance.

## SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

The assignment of errors contains twenty-five paragraphs. (R. 53-8). All of these except one support the basic proposition that the rate order appealed from and the judgment of the Supreme Court of Ohio, upholding that order, deprived the company of its property without due process of law in violation of section one of the fourteenth amendment to the constitution of the United States.

As heretofore shown, no issue of valuation is involved. The substantive issue is whether the rates fixed by the commission were confiscatory for the rate period. The issue as to lack of due process in the proceedings themselves centers around the contentions that the commission improperly used annual reports that were not in evidence, that it made improper eliminations of operating expenses, that it denied the company a rehearing to which it was entitled as a matter of right, and that the state supreme court did not make the independent judicial review of the law and the facts which due process requires in confiscation cases.

The remaining assignment sets forth the error of the supreme court in not finding that the commission had no power in this rate controversy to fix rates for any period

longer than the two-year term designated in the rate ordinance appealed from.

All the errors assigned are to be urged. In the argument they have been discussed under the different broad issues which they support and they are here summarized under the various headings that will be used in the argument:

The State Supreme Court Erred in Not Holding that the Rate Order was Void because the Commission had Predicated the Order on Matters Not Properly in Evidence.

*Assignment No.* 4: Error in relying upon annual reports not properly introduced in evidence.

The State Supreme Court Erred in Affirming the Finding and Order of the Commission which fixed Rates upon the Basis of an Arbitrary Disregard of Operating Costs incurred by the Company in Rendering the Service.

*Assignment No.* 7: Error in disregarding a substantial part of the cost of the gas purchased or produced in connection with rendering the service.

*Assignment No.* 8: Error in applying in this case a method of determining distribution and commercial costs that was inconsistent with the one adopted in the *Lima* case.

*Assignment No.* 9: Error in disregarding a substantial part of the general and miscellaneous costs incurred in rendering the service.

*Assignment No.* 10: Error in disregarding rate case expense.

*Assignment No.* 11: Error in disregarding the fact of increased excise taxes payable by the company after 1931.

*Assignment No.* 12: Error in taking into account as an operating expense an inadequate allowance only for retirement reserve.

*Assignment No.* 13: Error in disregarding entirely as an operating expense any amount for amortization of pipe line.

*Assignment No.* 14: Error in allocating certain expenses incurred by the company in rendering service.

*Assignment No.* 20: Error as to burden of proof as to necessity of operating expenses in rendering service.

*Assignment No.* 21: Error in finding that there was any evidence warranting the elimination of items of operating expense in determining net return.

*Assignment No.* 22: Error in invading the domain of management and interfering with freedom of ownership to control and operate property used in rendering service.

*Assignment No.* 23: Error in disregarding, and not according due weight to, competent and credible evidence.

**The State Supreme Court Erred in that it Did Not Find that the Commission, in Computing the Return Earned by the Company, Failed to Calculate Accurately what the Revenue of the Company would be for the Ordinance Period either under the Existing Rates or under the Rates Provided in the Rate Order.**

*Assignment No.* 6: Error through failure to calculate accurately the revenues under rates fixed by commission.

*Assignment No.* 2: Error through failure to determine correctly the earnings under existing rates.

**The State Supreme Court Erred in that it Upheld a Rate Order under which the Company would Not have Earned a Compensatory Return. Even Existing Rates Did Not**

Give the Company a Compensatory Return during the Ordinance Period.

*Assignment No.* 1: Error in upholding rate schedule for Kenton service fixed by commission order.

*Assignment No.* 2: Error in not finding that company did not obtain a compensatory return even under existing rates.

*Assignment No.* 3: Error in upholding order to make refund of the difference between the existing rates and those provided by the rate order.

*Assignment No.* 16: Error in holding that a return of even less than 6% per annum during the rate period would be adequate.

*Assignment No.* 17: Error in finding that the rates provided for by the commission order would yield a compensatory return for the rate period.

The State Supreme Court Erred in Not Finding that the Validity of the Rate Order must be Determined by its Effect on Net Earnings from Year to Year; and that the Rate Order and the Order to Refund were Invalid because this Requirement had not been Complied with.

*Assignment No.* 15: Error in not determining for each year of the rate period whether the net earnings would be sufficient to avoid confiscation.

*Assignment No.* 18: Error in not determining for each year of the rate period what return would be required to avoid confiscation.

The State Supreme Court Erred in Not Holding that, on a Statutory Appeal from a Municipal Rate Ordinance, the Commission was Without Power to Change Existing Rates for any Period Longer than the Period Designated in the Ordinance.

*Assignment No.* 19: Error in fixing rates for a period longer than two years.

**The State Supreme Court Erred in Not Holding that the Rate Order is Invalid because the Commission Refused to Grant the Company a Rehearing, Suitably Requested.**

*Assignment No.* 5: Error in refusing company an opportunity to put its 1931 and 1932 annual reports in evidence.

*Assignment No.* 25: Error in refusing company an opportunity to show actual effect of rate order as applied to all years, and especially 1932, and subsequently.

**The State Supreme Court Did Not Make that Independent Judicial Review of the Law and the Facts which Due Process and Equal Protection of the Laws Require.**

*Assignment No.* 24: Error in failing to make an independent review of the law applicable to, and the facts in, this case.

## SUMMARY OF ARGUMENT.

### I.

**A Review of the Record by this Court will Disclose that the Decision of the Commission and of the State Supreme Court Disregards Controlling Legal Principles.**

In fixing the rate, the commission paid no attention to the facts as to the net earnings for any periods subsequent to the effective date of the new rate. This is clearly error.

*Smith v. Illinois Bell Telephone Company*, 282 U. S. 133 (1930).

The correction of arithmetical errors establishes that even under the commission's theory of operating costs, the net return under the commission's rates for the single twelve-month period analyzed by the commission would be but 4.92% on the rate base.

See Argument.

Substantially accurate calculations from the evidence as to the revenues and expenses during the rate period show that even if the commission theory of determining operating costs be adopted the existing rates would be confiscatory by a wide margin for every year of the rate period.

In this case, the commission applied a different theory of determining operating costs than the theory it imposed upon the company in the *Lima* case (Cause No. 212 in this court).

See Argument.

## II.

**The State Supreme Court Erred in Not Holding that the Rate Order was Void because the Commission had Predicated the Order on Matters Not Properly in Evidence.**

There was a denial of due process of law to the company through the action of the commission in endeavoring to support its rate order by the use of data taken from annual reports of the company which were put in evidence by the commission after the termination of hearings in the case and without notice to the company. The request of the company for a rehearing was denied. The law is clear that, under these circumstances, the use of the reports constituted a denial of due process and rendered the rate order void.

*United States v. Abilene & Southern Railway Company*, 265 U. S. 274, 286-290 (1924).

*Interstate Commerce Commission v. Louisville and Nashville Railroad Company*, 227 U. S. 88, 91-4 (1913).

*The Chicago Junction Case*, 264 U. S. 258, 262-6 (1924).

*Northern Pacific Railway Company v. Department of Public Works*, 268 U. S. 39, 44-5 (1925).

*Washington ex rel. Oregon R. R. & N. Co. v. Fairchild*, 224 U. S. 510, 524-5 (1912).

*Crowell v. Benson*, 285 U. S. 22, 48 (1932).

*Ohio Utilities Company v. Public Utilities Commission of Ohio*, 267 U. S. 359 (1925).

## III.

**The State Supreme Court Erred in Affirming the Finding and Order of the Commission which fixed Rates upon the Basis of an Arbitrary Disregard of Operating Costs incurred by the Company in Rendering the Service.**

In determining net revenues, the commission disregarded (after arithmetical errors are corrected) almost $9,000.00 of the operating expenses for the single year considered. The evidence as to operating costs was undisputed. In refusing to hold that the action of the commission was illegal, the state court has ignored the record.

The items of expense eliminated by the commission may be classified into two groups; first, those that represent actual out-of-pocket expenditures made during the period in rendering the service, and secondly, those expenses incurred for the protection of the investors against the using up of the property in the service. More than $4,300.00 of the first class of expenditures has been disregarded for the year's period considered. This amount represents more than 2.26% on the rate base. If these costs are added to those used by the commission, the net earnings for the year considered would be but 2.66% under the commission's rates.

The amount omitted in the latter group is $4,518.04, or approximately 2.4% on the rate base.

In reference to the first mentioned group of expenses, the uniformly established rule is that where payments to an affiliated company are not involved the costs that have been actually incurred in rendering the service cannot be disregarded in fixing rates unless an abuse of managerial discretion or mismanagement or fraud in the making of the expenditures, is shown. The commission disregarded this well-founded principle and the state court erred in upholding the commission's action in the matter.

*Interstate Commerce Commission v. Chicago Great Western Railway Company,* 209 U. S. 108, 119-120 (1908).

*Missouri ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri,* 262 U. S. 276, 288-9, 290 (1923).

*Banton v. Belt Line Railway Corp.*, 268 U. S. 413, 421-2 (1925).

*Atchison, Topeka & Santa Fe Railway Co. v. United States*, 284 U. S. 248, 262 (1932).

*Brooklyn Borough Gas Co. v. Prendergast*, 16 F. (2d) 615, 623 (1926).

*Citizens' Gas Co. of Hannibal v. Public Service Commission of Missouri*, 8 F. (2d) 632, 634 (1925).

*New York & Richmond Gas Co. v. Prendergast*, 10 F. (2d) 167, 181 (1925).

*Chesapeake & Potomac Tel. Co. v. Manning*, 186 U. S. 238, 248 (1902).

*Public Utilities Commission v. Springfield Gas and Electric Co.*, 291 Ill. 209, 234 (1919).

*People ex rel. D. & H. Co. v. Stevens*, 197 N. Y. 1, 10 (1909).

*Columbus Gas Light Company v. Public Service Commission of Indiana*, 193 Ind. 399, 404 (1923).

*Monroe Gaslight & Fuel Co. v. Michigan Public Utilities Commission*, 11 F. (2d) 319, 325 (1926).

*Denver Union Stock Yard Co. v. United States*, 57 F. (2d) 735, 747-9 (1932).

*Re Milwaukee Electric Railway & Light Co.*, P. U. R. 1931E 289, 296 (1931).

Recent decisions of this court holding that the foregoing rule does not apply where transactions with an affiliated company are involved do not have application to the case at bar.

*Smith v. Illinois Bell Telephone Company*, 282 U. S. 133 (1930).

*Western Distributing Co. v. Public Service Commission of Kansas,* 285 U. S. 119 (1932).
*Dayton Power & Light Co. v. Public Utilities Commission of Ohio,* 292 U. S. 290 (1934).
*Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio,* 292 U. S. 398 (1934).

The commission improperly eliminated from operating expenses a part of the cost of gas purchased in connection with service in Kenton, such amount being approximately $2,000.00 for the year considered.

*Brooklyn Union Gas Co. v. Prendergast,* 7 F. (2d) 628, 652, 671 (1925).
14 *Proceedings Pacific Gas Association* 124 (1922).
14 *Proceedings Pacific Gas Association* 679 (1923).
15 *Proceedings Pacific Gas Association* 387 (1924).
*Brown's Directory of American Gas Companies.*

The commission, in dealing with distribution and commercial expense in this case, did not apply the same theory that it followed in the *Lima* case. If the method applied in the *Lima* case be upheld, it must likewise be applied in the case at bar.

See Argument.

The commission improperly ignored a substantial portion of the general and miscellaneous expense incurred by the company in rendering the service during the period considered. It also failed to take rate case expense into account. The state supreme court held that rate case expense should be considered, but it disregarded the necessary effect on the rate of return earned by the company if this item of expense be taken into account.

See Argument.

No consideration was given to the increased excise tax which the company has been required to pay to the state of Ohio since 1931. This is error.

See Argument.

The amount allowed by the commission for retirement reserve is insufficient. The company is entitled to an adequate allowance for retirement reserve as an annual operating expense. The commission cannot fix the allowance at a purely arbitrary figure.

*Pacific Gas & Electric Company v. San Francisco,* 265 U. S. 403, 423 (1924).

*United Railways and Electric Company of Baltimore v. West,* 280 U. S. 234, 254 (1930).

*City of Knoxville v. Knoxville Water Company,* 212 U. S. 1, 13-4 (1909).

*Mobile Gas Co. v. Patterson,* 293 Fed. 208, 223-4 (1923).

The rate of retirement reserve claimed by the company in this case had been approved by this commission in several previous rate orders affecting the company.

*In re West Ohio Gas Company,* 22 Ohio D. R. 121 (1925).

*In re West Ohio Gas Company,* 24 Ohio D. R. 527 (1926).

*In re West Ohio Gas Company,* 24 Ohio D. R. 535 (1926).

*In re Lima Natural Gas Company,* Commission Cause No. 2360.

Annual allowances approximately at the rate claimed by the company and at even higher rates have frequently

been held fair and reasonable by courts, commissions and other authorities.

*City of Belleville v. St. Clair County Gas & Electric Company,* P. U. R. 1915F 235 (3%).

*City of Winona v. Wisconsin-Minnesota Light & Power Co.,* 276 Fed. 996 (1921) (2½%).

*City of Bellingham v. Puget Sound Power & Light Company,* P. U. R. 1921E 5 (3½%).

*Mobile Gas Co. v. Patterson,* 293 Fed. 208 (1923) (2½% on cost new).

*Re Jackson County Light, Heat & Power Company,* P. U. R. 1926D 737 (2.75%).

*City of Manitowoc v. Wisconsin Fuel & Light Company,* P. U. R. 1927D 737 (3%).

*Wichita Gas Company v. The Public Service Commission,* 126 Kan. 220 (1928) (3%).

*Fort Worth Gas Co. v. City of Fort Worth,* 35 F. (2d) 743 (1929) (3.6%).

*Saliers, "Depreciation, Principles and Application,"* (1923) pp. 537-9.

*Depreciation Studies, Preliminary Report of the Bureau of Internal Revenue, Treasury Department,* January, 1931, pp. 1-2, 29, 33.

The commission erroneously eliminated from operating expenses the amount that the company had been authorized heretofore to take into account as a reserve for amortization of the company's investment in its gas transmission main. This action was unwarranted and inequitable.

*Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio,* 292 U. S. 398 (1934).

## IV.

**The State Supreme Court Erred in that it Did Not Find that the Commission, in Computing the Return Earned by the Company, Failed to Calculate Accurately what the Revenue of the Company would be for the Ordinance Period either under the Existing Rates or under the Rates Provided in the Rate Order.**

The commission refused to take into account what the revenues of the company had actually been during the rate period under the existing rates or what they would be after the refunding order had been complied with. The commission erroneously assumed that average revenues during the rate period were much larger than the actual revenues which the evidence showed the company obtained.

See Argument.

## V.

**The State Supreme Court Erred in that it Upheld a Rate Order under which the Company would not have Earned a Compensatory Return. Even Existing Rates Did Not Give the Company a Compensatory Return during the Ordinance Period.**

The return that the company would receive during the rate period under the commission rates is confiscatory even if operating expenses be disregarded to the extent attempted by the commission. When the actual operating expenses which were unlawfully disregarded by the commission are taken into account it is found that there is practically no return for the rate period. In determining a compensatory return it is essential to consider the actual effect of the rates imposed, in the light of the utility's situation, its requirements and opportunities.

*Smith v. Illinois Bell Telephone Company*, 282 U. S. 133, 160 (1930).

*Lindheimer v. Illinois Bell Telephone Co.*, 292 U. S. 151 (1934).

*Wabash Valley Electric Co. v. Young*, 287 U. S. 488, 501-2 (1933).

*Los Angeles Gas & Electric Corp. v. Railroad Commission of California*, 289 U. S. 287, 319-20 (1933).

*United Railways and Electric Company of Baltimore v. West*, 280 U. S. 234, 249-252 (1930).

*Bluefield Company v. Public Service Commission*, 262 U. S. 679, 692-5 (1923).

*Ohio Associated Telephone Co. v. Geiger*, 3 F. Supp. 997, 1004 (1933).

The evidence establishes that capital obtained by the company from the sale of bonds costs 7.07% per annum and that capital secured by preferred stock sales costs 8% per annum. These securities were issued under authority granted by the same commission scarcely three and one-half years before the commission made the rate order here complained of. A public utility is entitled to a return at a higher rate than the mere cost of borrowed moneys.

*McCardle v. Indianapolis Water Company*, 272 U. S. 400, 419 (1926).

*United Railways and Electric Company of Baltimore v. West*, 280 U. S. 234, 251-2 (1930).

The return that a utility should be allowed an opportunity to earn must be sufficient to secure confidence in the financial soundness of the utility and enable it to support and maintain its credit.

*Bluefield Company v. Public Service Commission*, 262 U. S. 679, 693-5 (1923).

*United Railways and Electric Company of Baltimore v. West,* 280 U. S. 234, 249-252 (1930).

*Wichita Gas Co. v. Public Service Commission of Kansas,* 2 F. Supp. 792 (1933).

The essentialness of keeping the actualities of the situation fully in view in this specific case being presented has recently been emphasized again in this court.

*Lindheimer v. Illinois Bell Telephone Co.,* 292 U. S. 151 (1934).

In giving weight to general economic conditions, the state court and the commission both lost sight of the fact that the rates in issue were being fixed for a part of 1929 and for 1930 as well as for 1931 and 1932.

See Argument.

Numerous decisions, many of them covering rates applicable to at least a part of the period covered by the rate period in the case at bar and affecting utilities larger, and with opportunities to secure money upon terms decidedly better than those which the company in this case could possibly have, are to the effect that the return allowed should be 7½% or 8% if confiscation is to be avoided.

*Wichita Gas Co. v. Public Service Commission of Kansas,* 2 F. Supp. 792 (1933) (8%).

*Denver Union Stock Yard Co. v. United States,* 57 F. (2d) 735, 745, 754 (1932) (7½%).

*United Fuel Gas Co. v. Public Service Commission of West Virginia,* 14 F. (2d) 209, 212 (1926); aff. 278 U. S. 322 (1929) (8%).

*New York Telephone Co. v. Prendergast,* 36 F. (2d) 54, 67-9 (1929) (7% for telephone companies is proper even though gas and electric companies entitled to 8%).

*Interborough Rapid Transit Co. v. Gilchrist,* 26 F. (2d) 912, 924-5 (1928) (8%).

*Brooklyn Borough Gas Co. v. Prendergast,* 16 F. (2d) 615, 622, 638 (1926) (8%).

*Kings County Lighting Co. v. Prendergast,* 7 F. (2d) 192, 194-5, 218; aff. 272 U. S. 579 (1926) (8%).

*New York & Richmond Gas Co. v. Prendergast,* 10 F. (2d) 167, 186-7 (1925) (8%).

*Southern Bell Tel. & Tel. Co. v. Railroad Commission of South Carolina,* 5 F. (2d) 77, 88-89 (1925) (8%).

*Brooklyn Union Gas Co. v. Prendergast,* 7 F. (2d) 628, 672 (1925) (8%).

*Consolidated Gas Co. of New York v. Prendergast,* 6 F. (2d) 243, 273-4, 280 (1925) (8%).

*Springfield Gas & Electric Co. v. Public Service Commission of Missouri,* 10 F. (2d) 252, 255 (1925) (8%).

*New York & Queens Gas Co. v. Prendergast,* 1 F. (2d) 351, 370 (1924) (8%).

*New York Telephone Co. v. Prendergast,* 300 Fed. 822, 826 (1924) (8%).

*City of Minneapolis v. Rand,* 285 Fed. 818, 830 (1923) (7½%).

*Mobile Gas Co. v. Patterson,* 293 Fed. 208, 221 (1923) (8%).

*Southwestern Bell Telephone Co. v. City of Ft. Smith,* 294 Fed. 102, 108 (1923) (8%).

*Brush Electric Company v. City of Galveston,* 262 U. S. 443, 445 (1923) (8%).

*Galveston Electric Company v. City of Galveston,* 258 U. S. 388, 400 (1922) (8%).

*Lincoln Gas & Electric Light Company v. City of Lincoln,* 250 U. S. 256, 267 (1919) (7% to 8%).

## VI.

**The State Supreme Court Erred in Not Finding that the Validity of the Rate Order must be Determined by its Effect on Net Earnings from Year to Year; and that the Rate Order and the Order to Refund were Invalid because this Requirement had not been Complied with.**

In making its rate order in the case at bar, the commission disregarded the facts in evidence as to revenues, expenses and net earnings for the entire period during which the rate was made effective. This clearly makes the order void.

> *Smith v. Illinois Bell Telephone Company,* 282 U. S. 133, 162 (1930).

A commission order fixing rates for a period that is past cannot be sustained against a claim of confiscation except for those years of the past period, if any, in which the utility would have earned a compensatory return under such rates.

> *Galveston Electric Company v. City of Galveston,* 258 U. S. 388, 400-1 (1922).
>
> *Banton v. Belt Line Railway Corp.,* 268 U. S. 413, 418 (1925).
>
> *City of Knoxville v. Knoxville Water Company,* 212 U. S. 1, 19 (1909).
>
> *Lincoln Gas & Electric Light Company v. City of Lincoln,* 250 U. S. 256, 258 (1919).
>
> *Willcox v. Consolidated Gas Company,* 212 U. S. 19, 54-55 (1909).
>
> *Brush Electric Company v. City of Galveston,* 262 U. S. 443, 446 (1923).

*Smith v. Illinois Bell Telephone Company,* 282 U. S. 133, 162 (1930).

*Ohio Associated Telephone Co. v. Geiger,* 3 F. Supp. 997, 1004 (1933).

Actualities as to revenues, operating costs and net earnings cannot be ignored for estimates.

*Wisconsin-Minnesota Light & Power Company v. Railroad Commission of Wisconsin,* 183 Wis. 104, 105-6 (1924).

The refund order is likewise invalid as applied to the past years because of the failure of the commission to observe this principle.

See Argument.

## VII.

**The State Supreme Court Erred in Not Holding that, on a Statutory Appeal from a Municipal Rate Ordinance, the Commission was Without Power to Change Existing Rates for any period Longer than the Period Designated in the Ordinance.**

The rate ordinance appealed from, fixed rates for a two-year period. Under the Ohio statute, the commission in deciding the appeal could not change the existing rate for a time longer than the two-year period. In the case at bar the commission attempted to make the rate applicable for three and one-half years. This was error.

*General Code of Ohio,* Section 3982.

*General Code of Ohio,* Sections 614-44 to 614-46, both inclusive.

## VIII.

**The State Supreme Court Erred in Not Holding that the Rate Order is Invalid because the Commission Refused to Grant the Company a Rehearing, Suitably Requested.**

The commission arbitrarily denied the company an opportunity to show on rehearing the results of its operations in Kenton during 1932 and the first part of 1933. Such denial constitutes reversible error.

*Atchison, Topeka & Santa Fe Railway Co. v. United States,* 284 U. S. 248, 260-2 (1932).

The introduction by the commission, after the termination of the hearings, of the company's annual reports for the years 1928, 1929 and 1930, its refusal to give the company an opportunity to be heard in reference to these reports, and its refusal to include the 1931 and 1932 reports in the record, if any reports were used, constituted reversible error.

See Argument.

## IX.

**The State Supreme Court Did Not Make that Independent Judicial Review of the Law and the Facts which Due Process and Equal Protection of the Laws Require.**

Upon its appeal from the commission's rate order to the state supreme court, the company was entitled to an independent judicial review of both the facts and the law under the guarantees provided for in the fourteenth amendment to the federal constitution. This fundamental right was not afforded the company by that court.

*Atchison, Topeka & Santa Fe Railway Co. v. United States,* 284 U. S. 248, 262 (1932).

*Ohio Valley Water Company v. Ben Avon Borough,* 253 U. S. 287, 289 (1920).

*Ohio Utilities Company v. Public Utilities Commission of Ohio,* 267 U. S. 359, 364 (1925).

*State Corporation Commission of Kansas v. Wichita Gas Co.,* 290 U. S. 561, 569 (1934).

*Bluefield Company v. Public Service Commission,* 262 U. S. 679, 689 (1923).

*Prendergast v. New York Telephone Company,* 262 U. S. 43, 50 (1923).

*Lehigh Valley R. R. v. Commissioners,* 278 U. S. 24, 36 (1928).

*United Railways and Electric Company of Baltimore v. West,* 280 U. S. 234, 251 (1930).

*Crowell v. Benson,* 285 U. S. 22, 60 (1932).

*Van Wert Gaslight Co. v. Public Utilities Commission of Ohio,* 299 Fed. 670, 676 (1924).

*Chesapeake & Potomac Telephone Company of Baltimore v. West,* 7 F. Supp. 214, 230 (1934).

## ARGUMENT.

### I.

### A Review of the Record by this Court will Disclose that the Decision of the Commission and of the State Supreme Court Disregards Controlling Legal Principles.

The commission in this case fixed a rate under which it asserts in its order the company would, during the rate period, be able to pay the operating expenses incurred in serving gas in Kenton and earn an average annual return of 6%. The rates fixed, so the commission stated, were designed to attain this result. The state court approved the order on the theory that it produced those results. It is apparent, therefore, that if in fact the commission failed to make due allowance for the true cost of the service, or estimated the revenues too high, or fixed the rate of return too low, its rate order must be set aside.

In reality the commission rate order does not find the slightest support in the evidence in this case. And even if one closes his eyes to the facts established by the evidence, and blindly follows the commission through its manipulation of figures, no possible legal basis for the rate order can be found.

This may be readily and conclusively demonstrated.

*First:* The commission fixed rates designed to reduce the revenues of the company from $84,787.36 to $70,850.42 for the single twelve-month period considered. (R. 92). In determining the net return for that period, the commission took into account but $59,428.10 of the cost of rendering the service. (R. 92). Counsel for the commission admitted, and the state supreme court found, that $2,069.00 should be added to this $59,428.10 because of errors in calculations made by the commission's accountants.

(R. 34). This addition gives a recognized operating cost of $61,497.10 on the commission's own basis of determining operating costs. Subtracting this sum from the revenues for the period, under the commission rates, (i. e. $70,850.42) gives $9,353.32 as the return for the twelve months. This is an annual return of but 4.92% on the rate base, even after $8,968.42 of operating costs have been ignored.

*Second:* The commission gave no heed to the situation as to earnings that existed throughout the period for which it made its rates effective. (This was not because it did not have the evidence as to these facts. Such evidence was supplied in detail. [R. 159-75, 129-42].) Consequently, there has been no determination as to what return the company would receive for those years under the commission's rates.

A few approximate calculations will suffice to show that if the commission's rates are applied the return for those years would be clearly insufficient to avoid confiscation.

For the one twelve-month period considered, the commission reduced the expense item of natural gas purchased by $1,956.84, which reduced this item by 5.06%. For the same period, the commission reduced general and miscellaneous expense (after the $2,069.00 of inadvertent omissions are put back) by $2,354.37, or 21.44%. The other principal reductions which the commission made were $1,534.84 in retirement reserve allowance and the entire amortization of pipe line allowance amounting to $2,983.20.

The rate order reduced revenues 16.43%.*

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*NOTE: This is determined by subtracting $70,850.42, the sum which the commission says the rates fixed by it would have produced for the twelve-month period ending August 1, 1929, from $84,787.36, the actual gross revenue during that period; and then determining the ratio that this difference of $13,936.94 bears to the $84,787.36 of revenue.

With these percentages in mind, let us see what the return would be for the calendar years of 1929, 1930 and 1931 under the commission's rates and the commission's own theory of allowable operating expenses.

The actual revenues and the costs of operation are set forth in Company Exhibit 102, page 1. (R. 161).

By reducing the revenues by 16.43%, the cost of natural gas purchased by 5.06%, the general and miscellaneous expense by 21.44%, and the retirement allowance reserve by $1,534.84, and by eliminating entirely the allowance for amortization of pipe line, the following results are found which reasonably accurately show about what the commission would have necessarily developed if it had applied its rates and its theory of eliminating operating expenses to the year 1929 and to the first two calendar years during which the rate order was to be effective:

| | *Year 1929* | *Year 1930* | *Year 1931* |
|---|---|---|---|
| (A) Total cost of rendering service as shown on Company Exhibit 102, page 1.. | $71,923.11 | $67,701.65 | $61,419.14 |
| (B) Deduct amounts equal to: | | | |
| (a) 5.06% of cost of natural gas purchased ..... | 2,013.47 | 1,969.47 | 1,693.79 |
| (b) 21.44% of general and miscellaneous expense.. | 2,327.58 | 2,089.04 | 1,800.46 |
| (c) $1,534.84 of retirement reserve allowance ..... | 1,534.84 | 1,534.84 | 1,534.84 |

| | | | |
|---|---|---|---|
| (d) All of item of amortization of pipe line..... | 2,983.20 | 2,983.20 | 2,983.20 |
| | 8,859.09 | 8,576.55 | 8,012.29 |
| (C) Proportion of cost of rendering service to be taken into account on commission basis of ignoring items of expense. (A - B) | 63,064.02 | 59,125.10 | 53,406.85 |
| (D) Revenue under commission rates (83.57% of revenues actually collected).... | 72,054.21 | 67,154.56 | 60,402.90 |
| (E) Net earnings under commission rates and commission basis of expense. (D - C) | 8,990.19 | 8,029.46 | 6,996.05 |
| (F) Per centum return on rate base ($189,856.56) ..... | 4.74% | 4.23% | 3.68% |

*Third:* While in the *Lima* case, through the device of applying "customer averages," the commission *decreased* the distribution expense and the commercial expense for Lima as shown on the company's books, it refused to apply that theory in this case where the effect would be to *increase* those items of expense above the actual figures as shown on the books. Of course, if the theory is a proper one to be adopted in one case, it must be applied consistently in other like cases.

The "customer average" distribution and commercial expenses used in the *Lima* case were $3.52 and $2.04 per

customer, respectively. (*Lima* case, R. 93). The annual reports show that there were 1940 customers in Kenton at the end of 1928, and 1930 at the end of 1929. (R. 188, 235). Taking the smaller number of customers as a basis for calculation, and multiplying it by $3.52 and by $2.04, respectively, would have given $6,793.60 as the distribution expense item for Kenton, and $3,937.20 as the commercial expense item. The respective amounts actually used by the commission for those two items in this case were $3,478.21 for distribution expense, and $3,155.67 for commercial expense.

*Fourth:* The uncontroverted testimony is that the company's gross revenue from service in Kenton was $86,220.19 for the year 1929, $80,357.26 for the year 1930, and $72,278.21 for the year 1931. Applying the 16.43% ratio of reduction heretofore explained, the company's revenues from Kenton service would have been $72,054.21 in 1929 (if the commission's rates were applied to the entire year); $67,154.56 in 1930; and $60,402.90 in 1931. The uncontradicted evidence in the case shows that the total cost of operation in these three years was $71,923.11 in 1929; $67,701.65 in 1930; and $61,419.14 in 1931. Under the commission's rates and the actual operating costs, the net earnings of the company from such service would, therefore, have been $131.10 in 1929 (assuming rates applied to the entire year). This would be a return of less than 1/14th of 1% on the value of the company's property as fixed by the commission. The same rates would have produced an operating *deficit* of $547.09 in 1930, and a *deficit* of $1,016.24 in 1931. The foregoing facts are what the undisputed evidence establishes. The commission refused to permit the company to show that in 1932 its revenues from Kenton service were more than $5,000.00 lower than

in 1931, and that in 1932 its net earnings from such service were not substantially higher than in 1931.

In the face of all this, the commission has ordered the company to lower its rates for the three years and a half ending February 16, 1933, and to make refunds which careful calculations show to be in excess of $41,000.00, exclusive of interest. Only about 10% of the company's revenues are derived from service in Kenton. (R. 161, 206, 254, 300). Subject to minor variations, the rates charged in Kenton are the same as those charged by the company in all other communities served by it. (R. 155-6). The refund required under the commission order is more than the entire surplus accumulated by the company at the end of 1930, after over five years of operations, if one deducts general deferred charges from the surplus. (R. 283-4). The commission arbitrarily refused the company an opportunity to show the fact that by the end of 1932, when these deferred accounts had been adjusted, its entire surplus was only about three-fourths of the amount of the refunds ordered.

During its existence, the company has never paid common stock dividends at a rate as high as 4% a year and during the first three years of the company's operations no dividends were paid on common stock. The commission refused to put in evidence the company's 1932 annual report to it, which report shows the fact that in that year no common stock dividends were declared.

A study of the entire record impels one to the conclusion that the commission was determined to fix a lower rate in this case, regardless of its right under the law so to do. Its action was arbitrary, and, as will be specifically shown, wholly at variance with the evidence. Its findings are almost wholly unsupported by the evidence, and are based on erroneous calculations. If the order be permitted

to stand, the property of the company devoted to the public service will be taken without adequate compensation.

In its petition for rehearing before the commission, and in its petition in error in the state court, the company objected to the method adopted by the commission in determining what, if any, refunds the company should make in connection with charges for past services. The commission assumed that a rate based on net earnings for the twelve-month period ending August 1, 1929 could be applied to each of the years for which the rates were fixed, regardless of the effect of the rates during such years. The company insists that such a method is erroneous, and that the rate order is unconstitutional and invalid as to any and all of those years in which the company would not have earned a fair return thereunder. *(Smith v. Illinois Bell Telephone Company,* 282 U. S. 133 (1930) and other cases hereafter discussed). This is not a mere academic objection, but one which vitally affects the substantive rights of the company.

The commission also assumed that it had statutory authority to suspend the company's lawfully published rates for a period longer than the term named in the municipal rate ordinance appealed from. This position, we submit, is erroneous, and even if a situation existed where any decrease in the company's rates could be ordered, the change could be made effective only for the time designated by the municipal ordinance.

We shall discuss these various errors under the general headings which have been set forth under the "Specification of Assigned Errors Intended to be Urged," pages 18-22, *supra.*

In presenting the argument in this case, we shall not repeat our discussion of similar points that are dealt with in the brief filed in the *Lima* case (Cause No. 212 before

this court). We shall simply refer to the pages in that brief where the same points are discussed. We respectfully ask the court to consider that discussion in deciding this appeal.

## II.

**The State Supreme Court Erred in Not Holding that the Rate Order was Void because the Commission had Predicated the Order on Matters Not Properly in Evidence.**

This issue is identical with the similar issue in the *Lima* case, except that, in the case at bar, the commission put in evidence the annual reports for the years 1928, 1929 and 1930 only, and left out the reports for both 1931 and 1932.

Our entire argument on this point presented in the brief in the *Lima* case is applicable to the like issue in the case at bar. (See *Lima* brief, pages 55-62). We submit that, for the reasons there set out and under the authorities there discussed, the rate order in this *Kenton* case is void for lack of due process and that the state supreme court should have so held.

## III.

**The State Supreme Court Erred in Affirming the Finding and Order of the Commission which fixed Rates upon the Basis of an Arbitrary Disregard of Operating Costs incurred by the Company in Rendering the Service.**

The actual operating cost incurred by the company in rendering Kenton service for the twelve-month period prior to the effective date of the rate ordinance and for the three calendar years of 1929, 1930 and 1931 was shown by the company. (R. 159-75). The commission ignored all this evidence except that as to the twelve-month period prior to

the effective date of the ordinance. It assumed, therefore, in making its rate order, that the revenues, expenses and net earnings for the period subsequent to August 1, 1929 (which was the time for which the rates were to be actually effective), would be substantially the same as for the period preceding the effective date of the rate. In view of the fact that the commission had before it complete evidence which showed that the assumption was a false one, and in view of the fact that in reaching its result in the *Lima* case (which it was considering at the same time) it *did* take into account the earning situation for the entire rate period, the conclusion becomes inescapable that the commission, seeing that the undisputed evidence rendered plainly confiscatory the arbitrary reduction in rates which it desired to make in this case, disregarded the proved factual situation for the entire rate period and considered only a single twelve-month period when revenues and earnings were far above those for the period during which the rates were to apply.

Even then, before the commission could create an excuse for reducing the rates to the point selected, it was necessary for it to ignore a substantial portion of the costs of operation and to proceed as to other items of cost upon a theory which was in direct conflict with the theory that it was at the same time applying to the company in fixing rates for Lima.

In order that the differences between the operating expenses claimed by the company for the period considered by the commission and those taken into account under the corrected commission figures may be easily compared, we have set forth a tabulation showing the difference between average expenses incurred in Kenton service during that period, as shown by Company Exhibit 102, and the expenses taken into account by the commission when errors of its accountants are corrected.

Cost of Rendering Gas Service in Kenton for Twelve-month Period Ending August 1, 1929.

| *Operating Expenses* | *Amount shown by Evidence, (Company Exhibit 102, p. 1)* | *Amount Assumed by Commission* | *Reduction by Commission* |
|---|---|---|---|
| Gas Produced and Purchased | $38,674.35 | $36,717.51 | $1,956.84 |
| Distribution Expenses | 3,478.21 | 3,478.21 | ..... |
| Commercial Expenses | 3,155.67 | 3,155.67 | ..... |
| New Business Expenses | 1,148.49 | 1,148.49 | ..... |
| General and Misc. Expenses | 10,979.63 | 8,625.26 | 2,354.37 |
| Indirect Charges to Constr. | (215.56) | (215.56) | ..... |
| Retirement Allowance | 4,154.58 | 2,619.74 | 1,534.84 |
| Amortization of Pipe Line | 2,983.20 | ..... | 2,983.20 |
| Real and Personal Prop. Taxes | 2,538.15 | 2,538.15 | ..... |
| State of Ohio—Excise Tax | 1,226.31 | 1,144.62 | 81.69 |
| Tax of Ohio Pub. Util. Com. | 47.84 | 47.84 | ..... |
| Federal Income Tax | 1,809.00 | 1,751.52 | 57.48 |
| Uncollectible Accounts | 485.65 | 485.65 | ..... |
| | $70,465.52 | $61,497.10 | $8,968.42 |

NOTE: ( ) denotes red figures.

It will be noted from an examination of this table that the principal differences between the facts and the commission's theories are in the items of cost of gas purchased, general and miscellaneous expense, retirement allowance and amortization of pipe line allowance. In addition to the foregoing items of expense there is an increase in state excise tax of approximately $660.00 per year commencing with the year 1932, which the commission ignored entirely.

As was true in the *Lima* case, the ignored items of expense are of two classes. First, those that represent

actual out-of-pocket expenditures, and secondly, those for depreciation and amortization reserve which are partly actually expended for replacements and partly carried in a reserve account to protect the integrity of the investment. In the former group the commission has ignored more than $4,300.00 for the twelve-month period considered. This disregard of actual costs increased the figure for net return on the rate base by over 2.26% for that period. If the commission's rates are applied to that period and these items of actual cost are taken into account, the return under those rates would be only 2.66%.

In the latter group, the amount disregarded is $4,518.04. This is approximately 2.37% on the rate base. If both of these groups of expenses be fully taken into account and the commission rates be applied to the year's period considered, earnings would be but 29/100ths of 1% on the rate base.

We call the court's attention again to the fact that, in this case, there was no evidence as to operating expenses except that given by the company. The company showed in detail by years what its operating costs had been up until the end of 1931. Its chief accounting officer presented and explained these accounts and he was subject to any cross-examination that the commission or city representatives cared to make. That cross-examination did not develop any basis of support for the elimination of any of the actual operating costs. (R. 146-56). In this situation, the same principles which we presented to the court in the *Lima* case apply here and we respectfully refer the court to the authorities there cited and to the argument advanced at pages 67-81 in our brief in that case.

We shall here refer briefly to the action of the commission and the state court as applied specifically to each group of operating expenses disregarded.

### 1. Gas Purchased.

As to this item of expense, the commission followed the plan adopted in the *Lima* case of making an arbitrary reduction in the cost of gas purchased because of asserted excessive losses in unaccounted-for gas. However, in this case, the commission cut the allowance for unaccounted-for gas down to 5% of the send-out, whereas in the *Lima* case the allowance made was 7%. The commission made no claim that such a reduction was justified by the evidence. It merely asserted in its order that, it "feels that a 5% loss in the distribution of gas is adequate." (R. 90). In its opinion in the *Lima* case, the commission had suggested that "it is possible that leakage of artificial or mixed gas is greater than leakage of natural gas, due to the fact that there is greater moisture in artificial or mixed gas than in natural gas." (*Lima* case, R. 95). It may reasonably be presumed from this, we assume, that the reduction here to 5% instead of 7% was predicated on the possibility suggested in the *Lima* case opinion.

The observation of the commission in that opinion is inaccurate. It could readily have been shown, if an issue of unaccounted-for gas had been raised at any time during the proceedings, that the additional moisture content in artificial or mixed gas tends to seal the smaller leaks in the gas mains and services and to reduce rather than increase leakage. In other words, insofar as the factor of artificial or natural gas affects the problem at all, the situation is in reality just the reverse of that stated by the commission.

The subject of gas leakage was touched upon in the testimony given during the taking of evidence as to valuation. The only evidence upon the subject is that of com-

pany witnesses. As a result of an inquiry as to the general subject of gas leakage, made by the city during its cross-examination of an engineering witness for the company (R. 119-21), Mr. Frank L. Pringle, comptroller of the company, was asked on direct examination about the unaccounted-for gas losses of the company. His testimony not only showed the various factors affecting these unaccounted-for gas losses but established the high standard followed by the company in the maintenance of its gas lines. (R. 123-5, 155).

The testimony above referred to constitutes all the testimony on the subject. Certainly there is nothing in that testimony establishing any justification for the reduction attempted by the commission.

We respectfully refer the court to what we have said on this subject at pages 82-89 in the *Lima* brief.

### 2. Distribution and Commercial Expense.

The commission considered these expenses in the amount shown by the books of the company. In passing, we invite the court's attention again to the fact that in fixing rates for Lima the commission applied a theory of "customer averages" to distribution and commercial expenses of the company. We submit that the commission's treatment of these items of expense was correct in the case at bar and wrong in the *Lima* case. However, we submit that it is self-evident that "customer averages" cannot be applied in the *Lima* case as a device for reducing the amount of those expenses chargeable to Lima service and then discarded in fixing rates for other communities served where the result would be, as it would be in the case at bar, that those expenses charged to such community would be substantially increased over the actual expenses for serving that community. See pages 41-2, *supra*.

### 3. General and Miscellaneous Expense.

In dealing with this item of expense, the commission did resort to "customer averages;" apparently because it thought by the use of them it could cut down this item of expense in the Kenton district. When the necessary correction is made for errors in calculations, the principal difference between the amount taken into account by the commission and the actual charges to Kenton is due to the application of the "customer average" method and the failure to take rate case expense into account.

The error in the method of allocation attempted is the same as that discussed in the *Lima* case and we ask the court to consider the argument made there. (*Lima* brief, pages 107-9).

The state supreme court recognized that rate case expense should have been taken into account but it did nothing about the fact that this was not done although the failure to give adequate allowance for that item seriously affected the return. In fact, the amount of the rate case expense which is properly attributable to that period and which was missed by the commission, was $1,724.31. (R. 162). This is about 9/10ths of 1% on the rate base. As to this item, the company showed fully the nature of the expenditures that had been necessary in appealing from ordinances that were found to be confiscatory. (R. 169-70). There is no question about the necessity of the appeals, since the ordinance rates were found to be grossly inadequate. (R. 84, 139-42, 170). There was no challenge as to the necessity of the expenses incurred. The company had to have the property appraised, it had to prepare and present its evidence in the rate proceedings, and it had to make numerous studies which were summarized in the exhibits introduced.

In this situation we think it is clear that the actual expense incurred by the company must be allowed and that the state supreme court erred in that it did not either determine what the effect of this allowance would be on the net earnings or remand the case to the commission for its determination of that issue.

### 4. Excise Tax Expense.

The situation as to this item of expense is also similar to the like item in the *Lima* case. The amount of the increased tax would be about $660.00 for 1932 or more than 1/3 of 1% on the rate base.

See *Lima* case brief, page 113.

### 5. Retirement Reserve Allowance.

In this case, there was no evidence introduced on the subject as to retirement reserve allowance except that put in by the company. In its exhibit as to operating expenses the company included for this item an allowance at the rate that had been found reasonable by the commission in rate proceedings involving the company and growing out of an ordinance passed by the city of Kenton in 1926. In view of the short time that had passed since that order, and in the absence of any direct challenge of this item, it was assumed that the showing made was sufficient. This assumption seems warranted, especially in view of the fact that, under the reserve allowance that the commission had previously fixed, an average useful life of the property of more than fifty-two years would have to exist before the reserve would prove sufficient. When one considers the many substantial items in the property account of the company, such as meters, services, general equipment and automobiles, whose useful lives are far below that average, the allowances previously fixed by the commission appear to be duly conservative.

We submit that in the light of these facts the commission was not warranted, in the absence of any evidence showing the need of a change in the retirement rate or challenging it, in reducing the amount by over 35%.

For a discussion of the general principles applicable, we refer the court to our brief in the *Lima* case, pages 115-7, 121.

### 6. Amortization of Pipe.

The situation in reference to this item, and the elimination by the commission of the entire allowance, is identical with the situation that we discussed on pages 125-8 of our argument in the *Lima* case. For the same reasons there pointed out, the exclusion ought not to be permitted and we submit that the state court erred in not requiring the commission to take the item into account.

## IV.

**The State Supreme Court Erred in That It Did Not Find that the Commission, in Computing the Return Earned by the Company, Failed to Calculate Accurately What the Revenue of the Company would be for the Rate Period either under the Existing Rates or under the Rates Provided in the Rate Order.**

As a basis for its calculations, the commission used an assumed annual revenue of $84,787.36 as the amount derived by the company from gas utility service in Kenton during the rate period.

The assumed revenues are obviously greater than the actual revenue was during the rate period. The record shows that, while revenues from Kenton service for the calendar year 1929 were $1,432.83 higher than those for the twelve-month period considered by the commission, the 1930 revenues were $4,430.10 *below* those the commis-

sion considered and the revenues for 1931 were $12,509.15 *below* the revenue figures used by the commission. The foregoing figures are all shown by undisputed evidence, but neither the commission nor the court paid any attention to these facts.

The company was denied an opportunity to show the fact that revenues were still lower in 1932. (R. 101-2, 105). But without such showing such fact must be fairly assumed in the light of the generally known experience in the utility and other business fields during that year. Anyone who reads, knows the effect of economic conditions upon utility revenues in 1932, particularly during the last half of the year. Furthermore, the commission had this fact before it in the 1932 annual report of the company, which it arbitrarily kept out of evidence. The truth of the matter is that the 1932 revenues from Kenton service were, under existing rates, slightly in excess of $66,000.00; and in its petition for rehearing to the commission, the company offered to show these facts.

As a result of its failure to consider the evidence as to actual revenues during the rate period, the commission greatly overestimated the revenue that would remain to the company under the rates named in the rate order. It is obvious that without taking into account actual revenues that had been derived, the commission could not reach any intelligent conclusion as to the effect of its rate order upon earnings during the rate period. The making of such a study was an essential to the entry of any sustainable order as to rates.

V.

**The State Supreme Court Erred in that it Upheld a Rate Order under which the Company would Not have Earned a Compensatory Return. To Avoid Confiscation an Annual Return Greatly in Excess of the Return that would have been Earned under the Commission's Rates must be Allowed. Even Existing Rates Did Not Give the Company a Compensatory Return during the Ordinance Period.**

We think it is clear from the foregoing discussion that the unjustified reduction or elimination of items of operating expense necessarily renders invalid and calls for a reversal of the rate order of the commission. But even if the commission's own idea as to the amount of operating expenses to be considered is applied, still it is necessary to set the rate order aside. Unquestionably the order does not provide a compensatory return. It does not even provide a return that approaches the 6% which the commission asserted it was allowing and which the state court seemed to assume had been allowed.

The rates ordered in effect by the commission will reduce the company's Kenton revenues by approximately 16½%. (See p. 39, *supra*). Under such rates, the company, after taking care of the costs of service as proved by the evidence in this case, would have net earnings of only $131.10 for 1929 (assuming the rates applicable to the entire year). This gives a rate of return on the commission valuation of the company's property of about 1/15th of 1% in 1929. For 1930 and 1931 the rates fixed actually produce less revenue by $547.09 and $1,016.24, respectively, than the sums required in those years to pay the costs of rendering the service. A like situation would exist for 1932, as the company could have proved if it had been permitted to introduce the evidence. The rate order

is clearly violative of the fourteenth amendment to the federal constitution, and, of course, cannot be sustained.

The fact is that under existing rates the company has not earned, during the past two years, the 6% annual return that the commission asserts the company would still have after it had refunded to consumers in Kenton about 16½% of its revenues from Kenton service. Under present rates Kenton service produced a net return of less than $11,000 in 1931, or about 5.7% on the valuation fixed by the commission. (See p. 13, *supra*). If the commission had permitted the facts to be shown, the company would have established that under existing rates earnings in 1932 were only about 5.8% on the valuation. Yet the commission has attempted by its order to compel the company to refund *more than the total amount* of these meager net earnings.

We have discussed at length in our brief in the *Lima* case the facts which, we submit, show conclusively that a return of even 6% per annum throughout the rate period would be wholly inadequate and insufficient to avoid confiscation under the situation involved here. All that we said there is applicable here and we ask the court to consider in this case that discussion which is set forth on pages 130-48 of the brief in the *Lima* case.

## VI.

**The State Supreme Court Erred in Not Finding that the Validity of the Rate Order must be Determined by its Effect on Net Earnings from Year to Year; and that the Rate Order and the Order to Refund were Invalid because this Requirement had not been Complied with.**

In this case the commission violated, far more flagrantly even than in the *Lima* case, the principle that had been laid down by this court that in fixing rates the effect of the

rates for each of the past years for which they are made effective must be determined.

Here the commission made a rate order applicable to a past period covering three and one-half years. The order is entirely retroactive in its application. The commission had before it undisputed evidence showing what the revenues and expenses were for all of those years except 1932. It ignored this evidence. It based its order solely upon figures for the twelve-month period ending August 1, 1929, which was a period *prior* to the effective date of the rate. It gave no consideration to the question, and refused to determine, what the actual effect of the rate would be as applied to any year of the rate period. It directed that refunds be made to consumers served during each year of the rate period, without making any finding as to what, if any, net earnings the company actually had for such year or would have remaining after the refund. As to 1932, it refused to receive evidence as to revenues, expenses and net return. (R. 105). For the other years, it disregarded the evidence that it did receive. Assuming that the rate named would have been a valid rate during the period considered by the commission in fixing it, it could not be upheld for any of the years covered by the ordinance except such, if any, during which it would yield revenues sufficient to pay operating expenses and give a fair return.

The necessity for this is clear. Actualities cannot be ignored for estimates.

> *Wisconsin-Minnesota Light & Power Company v. Railroad Commission of Wisconsin,* 183 Wis. 104, 105-6 (1924).

When any part of the rate period is past and the facts as to operations for such time are therefore available, these facts, not some different hypothetical figures, must be used as the basis for a valid retroactive rate order.

The controlling authorities are cited and discussed on pages 149-54 of our brief in the *Lima* case, to which we respectfully ask the court to give consideration.

## VII.

**The State Supreme Court Erred in Not Holding that, on a Statutory Appeal from a Municipal Rate Ordinance, the Commission was Without Power to Change Existing Rates for any Period Longer than the Period Designated in the Ordinance.**

This point was made and argued before the state supreme court. That court makes no mention of it in its opinion. Several statements in the opinion of the court indicate plainly that it overlooked the issue. The opinion shows repeatedly that the court had in mind the fact that the rate order was limited to the ordinance period. (R. 33-4). The court's decision, however, upholds the commission's order which purported to affect rates for a period of a year and a half subsequent to the termination of the two-year period designated in the ordinance appealed from. We submit that in the light of the manner in which the court obviously failed to consider many of the facts in this case, and particularly in the light of the language in the opinion, it cannot be assumed that the court decided the point adversely after considering it. We appreciate fully the hesitancy of a federal court to pass upon a question of the construction of a state statute. We urge, however, that the company is entitled to a decision on this point in these proceedings, and that the statute itself clearly limits the effect of the rate order to the duration of the period named in the ordinance.

It is our view, after a careful study of the statute, that upon an appeal under sections 614-44 to 614-46 of the General Code of Ohio from a municipal rate ordinance passed as authorized by section 3982 of that code, the commission

has no authority to fix a rate or rates applicable to a period longer than that provided for in the ordinance; that any rate or rates fixed by the commission in such appeal ceases to be effective at the termination of the ordinance period; and that at such time the lawful rate which the utility had on file prior to the ordinance and which was suspended during the ordinance period again becomes the rate the utility is entitled to charge until a further change is made in some manner provided by law.

Section 3982 of the code gives municipalities the power to regulate gas and other utility rates. The first paragraph of section 614-44 reaffirms this right and refers to fixing the rate for "an ensuing period." Section 614-44, together with sections 614-45 and 614-46, provides for commission review of any rates fixed by ordinance; and section 614-46 states that through the commission proceedings there shall be determined the charge to be made *"during the period so fixed by ordinance* which shall not be less than two years," and gives the commission authority to order the furnishing of utility service under such charges for the ordinance period.

There are no reported decisions construing the statute, but the language used in the sections is plain and unambiguous. It expressly limits any change in existing rates made by the commission in such an appeal to the period of time designated in the ordinance. We submit that the state court should have so held.

## VIII.

**The State Supreme Court Erred in Not Holding that the Rate Order is Invalid because the Commission Refused to Grant the Company a Rehearing, Suitably Requested.**

The claims of the company under this heading are similar to like claims in the *Lima* case. There is this dis-

tinction,—that, in this case, the commission after the termination of the hearings considered data in the company's annual reports for the years 1928, 1929 and 1930. It put those reports in evidence without any notice to the company. It not only left out the 1932 report, but also the 1931 report.

As in the *Lima* case, the commission in this case refused the company an opportunity to show what the revenue expense and net earning situation was for 1932 and the early part of 1933.

We again ask the court to refer to our argument in the brief filed in the *Lima* case. Argument on this point is found on pages 154-8 of that brief.

## IX.

**The State Supreme Court Did Not Make that Independent Judicial Review of the Law and the Facts Which Due Process and Equal Protection of the Laws Require.**

It is abundantly evident that the state supreme court did not give the company an independent review of the facts in this case. The court was fully informed that the commission had erred in its mathematical calculations and that it had not considered the matter of earnings for any period during which the rates were made effective. The simplest kind of calculations from the figures presented to the court from the record showed that when the errors were corrected and when consideration was given to the contested figures applicable to the rate period, the earnings of the company under the rates fixed by the commission were far below the 6% per annum that the commission asserted it was allowing. (See pp. 39-42, *supra*). Yet, one finds the court stating that 6% on the rate base is sufficient "in the light of the times," and upholding the

commission action as affording the company such earnings. We respectfully submit that the company has been denied that independent review of the facts and the law which due process requires.

We refer the court, again without discussion, to the applicable authorities which are cited and discussed in the *Lima* brief, pages 158-61.

**Conclusion.**

We believe that the order of the commission here on review is a most flagrant attempt at confiscation of utility property. No utility, regardless of its financial strength, could survive under the type of administrative misregulation that produces orders prescribing rates inadequate even to provide revenues to cover the cost of the service rendered. To a company, such as this one, which has never had earnings that made possible any substantial surplus, such an order, if sustained, would undoubtedly paralyze, and soon destroy, its ability to serve.

In enacting its 1929 gas rate ordinance the city of Kenton was not even endeavoring to provide a constitutional rate. The undisputed evidence shows that fact. We think it is clear that the commission in this case has demonstrated a like disregard for the performance of its legal duties. Although the facts were before it, the commission paid no attention to the evidence as to revenues and expenses for the very period for which it was assuming to fix rates. The rate order was not predicated on, but was in disregard of, the evidence.

Under the order, the company has been denied that protection against the confiscation of its property to which it is entitled under the constitution of the United States. We respectfully submit that the Supreme Court of Ohio

plainly erred in not so holding. We ask that the judgment of that court be set aside by this court for the reasons that that judgment is not justified under the evidence in the case, and is contrary to the law applicable thereto.

Respectfully submitted,

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# APPENDIX A.

## Applicable Statutory Provisions.

**General Code of Ohio, Section 499-14:**

The commission shall have power to establish a system of accounts to be kept by the public utilities or railroads (including municipally owned or operated utilities), or to classify said public utilities or railroads and to establish a system of accounts for each class, and to prescribe the manner in which such accounts shall be kept; * * * Where the commission has prescribed the forms of accounts, records or memoranda to be kept by any public utility or railroad for any of its business, it shall thereafter be unlawful for such public utility or railroad to keep any accounts, records or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission. The commission shall at all times have access to all accounts kept by such utilities or railroads and may designate any of its officers or employes to inspect and examine any and all such accounts. It shall be the duty of the auditor or other chief accounting officer of any such utility to keep such accounts and make the reports provided for in section 614-48 of the General Code. Whoever being such auditor, or chief accounting officer, violates or fails to comply with the provisions of this section shall upon conviction thereof be subject to the penalties provided for in section 614-65 of the General Code. It shall be the duty of the attorney general to enforce the provisions of this section upon request of the commission, by mandamus or other appropriate proceedings.

**General Code of Ohio, Section 544:**

A final order made by the commission shall be reversed, vacated or modified by the Supreme Court, on a petition in error, if upon consideration of the record such court is of the opinion that such order was unlawful and unreasonable.

**General Code of Ohio, Section 545:**

The proceeding to obtain such reversal, vacation or modification shall be by petition in error, filed in the Supreme Court, by any party to the proceeding before the commission, against the Public Utilities Commission of Ohio, setting forth the errors complained of. Thereupon unless the same is duly waived a summons shall issue and be served, as in other cases, upon the chairman of the commission, or, in the event of his absence, upon any member of the commission, or by leaving a copy at the office of the commission at the city of Columbus. The court may permit any interested party to intervene by cross-petition in error.

**General Code of Ohio, Section 546:**

Upon service or waiver of the summons in error the commission shall forthwith transmit to the clerk of the Supreme Court a transcript of the journal entries, original papers or transcripts thereof and a certified transcript of all evidence adduced upon the hearing before the commission in the proceeding complained of, which shall be filed in said court.

**General Code of Ohio, Section 547:**

No proceeding to reverse, vacate or modify a final order of the commission shall be deemed commenced unless the petition therefor is filed within sixty days after the entry

of the final order complained of upon the journal of the commission.

**General Code of Ohio, Section 549:**

No court other than the Supreme Court shall have power to review, suspend or delay any order made by the commission, or enjoin, restrain or interfere with the commission or any member thereof in the performance of official duties. Nor shall the writ of mandamus be issued against the commission or any member thereof by any court other than the Supreme Court.

**General Code of Ohio, Section 614-44:**

Any municipal corporation in which any public utility is established may, by ordinance, at any time within one year before the expiration of any contract entered into under the provisions of Secs. 3644, 3982, and 3983 of the General Code between the municipality and such public utility with respect to the rate, price, charge, toll or rental to be made, charged, demanded, collected or exacted, for any commodity, utility or service by such public utility, or at any other time authorized by law proceed to fix the price, rate, charge, toll or rental that such public utility may charge, demand, exact or collect therefor for an ensuing period, as provided in Secs. 3644, 3982 and 3983 of the General Code. Thereupon the commission, upon complaint in writing, of such public utilities or upon complaint of one per centum of the electors of such municipal corporation, which complaints shall be filed within sixty days after the passage of such ordinance, shall give thirty days' notice of the filing and pendency of such complaint to the public utility and the mayor of such municipality of the time and place of the hearing thereof, and which

shall plainly state the matters and things complained of. • • • Upon such filing, the commission shall forthwith give notice of the filing and pendency of such complaint to the mayor of such municipality and fix a time and place for the hearing thereof. The commission shall, at such time and place, proceed to hear such complaint, and may adjourn the hearing thereof from day to day. The filing of a complaint by a public utility, as herein provided, shall be taken and held to be the consent of such public utility to continue to furnish its product or service, and devote its property engaged therein to such public use during the term so fixed by ordinance or by the provisions of this act. Parties thereto shall be entitled to be heard, represented by counsel, and to have process to force the attendance of witnesses.

**General Code of Ohio, Section 614-46:**

If the commission, after such hearing, shall be of the opinion that the rate, price, charge, toll or rental, so fixed by ordinance is or will be unjust or unreasonable, or insufficient to yield reasonable compensation for the service, the commission shall, with due regard to the value of all the property of the public utility, actually used and useful for the convenience of the public, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration for the grant of such franchise or right; and exclusive of any value added thereto by reason of a monopoly or merger and to the necessity of making reservations from the income for surplus, depreciation and contingencies, and such other matters as may be proper, according to the facts in each case, fix and determine the just and reasonable rate, price,

charge, toll or rental to be charged, demanded, exacted or collected by such public utility, during the period so fixed by ordinance which shall not be less than two years, and order the same substituted for the rate, price, charge, toll or rental so fixed by ordinance or the commission may find and declare that the rate, price, charge, toll or rental, so fixed by ordinance is just and reasonable, and ratify and confirm the same.

No such rate, price, charge, toll or rental so determined by the commission shall become effective or valid until after the commission shall have ascertained and determined the valuation upon which such price, charge, toll or rental is based as provided in this act. And such valuation so determined shall be, at all times, open to public inspection. Thereupon the commission shall make inquiry and investigation with respect to the ability of such public utility to furnish its product during such period, if it be found that it is able so to do, the commission shall order the public utility in question to continue to furnish the same for the period and at the rate, price, charge, toll or rental so fixed and determined, and such public utility shall continue to furnish its product as provided in such order. If the commission, after the hearing provided for in Sections 614-44 and 614-46 of the General Code shall be of the opinion that any provisions of the ordinance appealed from or complained of other than the rate, price, charge, toll or rental fixed thereby are or will be unjust or unreasonable or that the form and structure of the rate, price, charge, toll or rental fixed thereby may be unfair or unreasonable, or may have the effect of causing any rate, price, charge, toll or rental to be fixed by the commission to become unfair or unreasonable, the commission shall in its order strike out such unjust or unreasonable provisions, conditions, form and structure of said ordinance and shall substi-

tute therefor, if it deem it necessary such provisions and conditions as it may consider fair and reasonable, and make such changes in the form and structure of the rate, price, charge, toll or rental fixed in such ordinance as it may consider fair and reasonable.

**General Code of Ohio, Section 3982:**

The council of a municipality in which electric lighting companies, natural or artificial gas companies, gas light or coke companies, or companies for supplying water for public or private consumption, are established, or into which their wires, mains or pipes are conducted, may regulate from time to time the price which such companies may charge for electric light, or for gas for lighting or fuel purposes, or for water for public or private consumption, furnished by such companies to the citizens, public grounds, and buildings, streets, lanes, alleys, avenues, wharves, and landing places, or for fire protection. Such companies shall in no event charge more for electric light, natural or artificial gas, or water, furnished to such corporation or individuals, than the price specified by ordinance of council. The council may regulate and fix the price which such companies shall charge for the rent of their meters, and such ordinance may provide that such price shall include the use of meters to be furnished by such companies, and in such case meters shall be furnished and kept in repair by such companies and no separate charge shall be made, either directly or indirectly, for the use or repair of them.

**General Code of Ohio, Section 3983:**

If council fixes the price at which it shall require a company to furnish electricity or either natural or artificial gas to the citizens, or public buildings or for the purpose of lighting the streets, alleys, avenues, wharves, landing

places, public grounds or other places or for other purposes, for a period not exceeding ten years, and the company or person so to furnish such electricity or gas assents thereto, by written acceptance, filed in the office of the auditor or clerk of the corporation, the council shall not require such company to furnish electricity or either natural or artificial gas, as the case may be, at a less price during the period of time agreed on, not exceeding such ten years.

**General Code of Ohio, Section 5483:**

* * * In the month of October, annually, the auditor of state shall charge, for collection from each electric light, gas, natural gas, waterworks, telephone, messenger or signal, union depot, heating, cooling and water transportation company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported by the commission as the gross receipts of such company on its intra-state business for the year covered by its annual report to the commission, as required in this act, by taking one and thirty-five one-hundredths per cent of all such gross receipts, which tax shall not be less than ten dollars in any case.

**General Code of Ohio, Section 2294-4:**

* * * For the purpose of providing funds for poor relief and of the carrying out of the other purposes and provisions of this act, a sum in the nature of an excise tax for the privilege of carrying on its intra-state business in the amount of one per centum of the gross receipts of each electric light, gas, natural gas, waterworks, telephone, messenger or signal, union depot, heating, cooling, water transportation, and telegraph company, on its intra-state business from and after the effective date of this act, as covered by the annual reports required by law to be filed

by all such companies as are herein before mentioned in the years 1932, 1933, 1934, 1935, 1936, 1937, is hereby levied and imposed upon each such company in each of said years, such tax to terminate five years after the final date covered by the annual report filed by each of such companies in the year 1932; • • • The sum so levied to be in addition to the taxes provided for in Sections 5468, 5483, 5485 and 5488 of the General Code, and to be collected on the dates and in the manner provided in said sections.

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IN THE

# Supreme Court of the United States

October Term, 1934.

No. 213.

WEST OHIO GAS COMPANY,

Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO,

Appellee.

## BRIEF ON BEHALF OF APPELLEE.

## STATEMENT OF CASE.

On July 16, 1929, the city of Kenton, Ohio, pursuant to the provisions of Sections 614-44, 3982 and 3983 of the General Code of Ohio, passed an ordinance fixing the price which the West Ohio Gas Company should be permitted to charge for gas furnished to consumers within the city during a period of two years from and after August 16, 1929. The rates so fixed by the ordinance were as follows (R., 86):

First 400 cubic feet or less, 90¢

Next 2600 cubic feet 75¢ per M c. f.
Next 7000 cubic feet 65¢ per M c. f.
Next 10,000 cubic feet 60¢ per M c. f.

The company thereafter, in accordance with the provisions of the Ohio Statutes, filed with the Public Utilities Commission of Ohio its appeal from said ordinance and elected, pending the determination of the appeal, to charge the scheduled rates in effect prior to the passing of the ordinance under the provisions of Sections 614-44, 614-45, 614-46 of the General Code of Ohio. These rates were as follows (R., 21):

$1.25 for the first 400 cubic feet or less per month,
$1.05 per M c. f. for the next 9600 cubic feet,
$1.00 per M c. f. for the next 25,000 cubic feet,
$0.75 per M c. f. for all over 35,000 cubic feet.

On April 3, 1930, the commission commenced the hearing on the valuation of the company's property for the purpose of determining its fair value for rate-making purposes and on January 27, 1932, the commission entered its order fixing the value of the property as of August 15, 1929, the date certain, at $189,856.56 (R., 80-83).

No appeal was taken from the value so ascertained by the commission and the finding thereupon became final.

Following the determination by the commission of the value of the company's property used and useful in furnishing gas to the consumers in Kenton the commission on June 8, 1932, began the taking of testimony relating to the operating expenses and revenues of the company for the purpose of ascertaining the return earned by the company. In addition to the testimony introduced by

the company the commission, in accordance with the provisions of the Ohio Statutes (General Code 499-15), entered an order putting in evidence the annual reports of the company filed with the commission for the calendar years 1929, 1930 and 1931 (General Code 614-48).

Thereafter, on March 10, 1933, the commission entered its final rate order in the proceeding, supported by its written opinion issued the same day (R., 86-94). This finding of the commission held that the ordinance rates adopted by the city council of Lima, on July 16, 1929, to be effective for a period of two years from and after August 16, 1929, were insufficient to yield a fair return to the company upon the basis of the commission's valuation of the company's property, but that the rates being collected by the company were excessive, and fixed, pursuant to the provisions of the Ohio Statutes (G. C. 614-46), the following schedule of rates to be charged in Kenton during the ordinance period and thereafter until the sixteenth day of February, 1933, as fair and reasonable (R., 84-93).

400 cubic feet or less used per month, $1.00.

Next 2600 cubic feet used per month, 95¢ per M c. f.

Next 3500 cubic feet used per month, 85¢ per M c. f.

Next 3500 cubic feet used per month, 80¢ per M c. f.

Over 10,000 cubic feet used per month, 75¢ per M c. f.

House heating (as defined by company's schedule on file), 60¢ per M c. f.

It will be observed that the foregoing schedule of rates is somewhat less than the rates being collected by

the company under bond but considerably higher than the rates provided for in the ordinance.

The company prosecuted error proceedings from the commission's order to the Supreme Court of Ohio and that court on May 16, 1934, affirmed the order of the commission *(West Ohio Gas Company v. Public Utilities Commission of Ohio,* 128 O. S., 301, R., 14-35).

The case is in this court on appeal from the judgment of the Supreme Court of Ohio affirming the order of the Public Utilities Commission of Ohio.

## HISTORY OF THE COMPANY.

The history of the organization and development of the West Ohio Gas Company has been set forth fully in the brief filed on behalf of the appellee in the case of *West Ohio Gas Company, appellant, v. Public Utilities Commission of Ohio, appellee,* No. 212, October Term, 1934, which is now pending in this court, and involving the rates to be charged for gas furnished by this company to the consumers of Lima, Ohio. It will not be necessary, therefore, to repeat in detail the discussion which is contained in that brief and to which reference is now made. Suffice it to say that Kenton is one of the eleven communities served by the West Ohio Gas Company, a corporation which was organized in December, 1924, for the purpose of acquiring and consolidating several independent gas properties into one organization. The West Ohio Gas Company is a subsidiary of the Midland Utilities Company and both of these companies

are a part of what is commonly known as the Insull system (R., 87).

The type of gas which is furnished to the consumers of Kenton is natural gas which the company purchases from the Ohio Fuel Gas Company by virtue of a contract with that company at a price of 55¢ per M c. f. (R., 71-77), this gas being delivered to the line of the West Ohio Gas Company at a point fifteen miles east of Kenton and distributed through its mains to the consumers in Kenton (R., 115). The West Ohio Gas Company in furnishing gas to the consumers of Kenton produces no gas of its own and its property, in so far as the furnishing of gas to the consumers of gas in Kenton is concerned, consists entirely of a distributing system through which it conveys the gas purchased from the Ohio Fuel Gas Company to the premises of its customers.

The commission was of the opinion, and so found, that the purchase at a wholesale price of 55¢ per M c. f. for natural gas was too high, especially in the light of the fact that an abundance of natural gas is now available in Ohio. This was especially apparent in view of the further fact that in the cases of the Columbus Gas & Fuel Company and the Dayton Power and Light Company the commission had conducted an exhaustive study as to the cost of gas furnished to the various cities served by the Ohio Fuel Gas Company and had determined that a rate of 39¢ at the city gates was ample and even generous to cover all costs for such gas. This finding of the commission was approved by the Supreme Court of Ohio and by this court in the cases of *The Co-*

*lumbus Gas & Fuel Company v. Public Utilities Commission of Ohio,* 127 O. S., 109, and *The Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio,* 292 U. S., 398, 54 S. Ct., 703, 78 L. Ed., 1327, and in the case of *The Dayton Power and Light Company v. Public Utilities Commission of Ohio,* 127 O. S., p. 137, and in the case of *The Dayton Power and Light Company v. Public Utilities Commission of Ohio,* 292 U. S., 290, 54 S. Ct., 647, 78 L. Ed., 1267.

However, the commission found that since these companies were not affiliated companies it had no jurisdiction over the wholesale price of 55¢ and, therefore, in its computations it accepted this price as the cost of gas produced for the purpose of furnishing gas to the consumers of the city of Kenton, Ohio.

Under the rates which had been in effect in the city of Kenton and which are now contended for by the company the average cost per thousand cubic feet for gas furnished to Kenton consumers is roughly $1.15. Even accepting the 55¢ per thousand cubic feet as the cost of producing this gas it will at once be recognized that the distribution cost, including profit, is 60¢ per thousand cubic feet, and when it is realized that this same service is rendered in the cities of Columbus, North Hampton, Piqua, Sidney, South Charleston, Tippecanoe City, Troy, Washington C. H., and Wilberforce, Ohio, at from 16¢ to 18¢ per thousand cubic feet *(The Columbus Gas & Fuel Company v. The Public Utilities Commission of Ohio, supra. The Dayton Power and Light Company v. The Public Utilities Commission of Ohio, supra),* it is apparent that the cost of distribution in Kenton is exceptionally high. The commission accordingly undertook a very careful study of the distribution costs of the company in the furnishing of gas to the city of Kenton and

determined that the operating expenses, as contended for by the company, were excessive and accordingly made certain reductions in those operating expenses, the total amount of these reductions being $8968.42 for the year ending August 1, 1929, which was the period used by the commission for the purpose of determining the fairness of the ordinance rate. Upon the basis of the company's computation (appellant's brief, p. 13), the rate of return earned by the company for the year ending August 1, 1929, was 7.54%. The reductions in the operating expenses made by the commission for this same period increased this rate of return to 12.27%. The commission felt that such a rate of return was excessive and in prescribing the schedule of rates which should prevail in the city of Kenton during the ordinance period and thereafter until February 16, 1933, it prescribed rates which, in its opinion, would reduce this rate of return to what it considered more nearly a fair rate of return in the light of all the circumstances and at the same time would enable the consumers of Kenton to secure a supply of gas at a price somewhat more nearly in line with the value of the product.

The differences between the company and the commission, therefore, arise by virtue of reductions made by the commission in the amounts claimed by the company for operating expenses. These reductions and the amounts thereof were as follows: Amount claimed for amortization of pipe line $2983.20. This amount was disallowed in its entirely for the reason that there was no basis upon which to justify the amortization contended for by the company; depreciation, $1534.84; cost of gas sold, $1956.84. General and miscellaneous expenses, $2354.37; excise tax, $81.69; federal income tax, $57.48. All of the

other operating expenses as contended for by the company were accepted in the full amounts claimed and allowed by the commission.

The operating expenses as contended for by the company and as allowed by the commission, together with the differences for the year ending August 1, 1929, are shown in the following table:

TABLE NO. 1.

DIFFERENCES IN EXPENSES BETWEEN COMPANY AND COMMISSION.

| | *Description* | *Expenses for Year Ended Aug. 1, 1929.* | | |
|---|---|---|---|---|
| | *Expenses:* | *Company* | *Commission* | *Difference* |
| 1. | Natural Gas Purchased | $38,674. | $36,717. | $1,957.— |
| 2. | Distribution Expenses | 3,478. | 3,478. | ..... |
| 3. | Commercial Expenses | 3,156. | 3,156. | ..... |
| 4. | New Business Expenses | 1,148. | 1,148. | ..... |
| 5. | General and Miscel. Expenses | 10,980. | 8,625. | 2,355.— |
| 6. | Indirect Charges to Constr.—Cr. | ( 216.) | ( 216.) | ..... |
| 7. | Retirement Allowance—Deprec. | 4,155. | 2,620. | 1,535.— |
| 8. | Allowance for Amort. of Pipe Line | 2,983. | ..... | 2,983.— |
| 9. | Real & Personal Property Taxes | 2,538. | 2,538. | ..... |
| 10. | State of Ohio—Excise Tax | 1,226. | 1,145. | 81.— |
| 11. | P. U. C. O. Tax | 48. | 48. | ..... |
| 12. | Federal Income Tax | 1,809. | 1,752. | 57.— |
| 13. | Uncollectible Accounts | 486. | 486. | ..... |
| 14 | Total Expenses | $70,465. | $61,497. | $8,968.— |

Errors admitted in figures shown in Commission's opinion, transcript page 94.

| | |
|---|---|
| Total Expenses shown in opinion | $59,438. |
| General & Administrative Expenses omitted | 2,069. |
| Error in footing | ( 10.) |
| Corrected total expenses shown above | $61,497. |

NOTE: ( ) Indicates red figures.

The methods employed by the Commission which resulted in the differences shown on lines 1, 5, 7, 10, and 12 above are explained in notes "A" to "E" on page 94 of the transcript. The difference on line 8 above is due to the Commission's disallowance of Amortization of Pipe Line explained on page 88 of the transcript.

This case then turns upon the proposition of whether or not the reductions in operating expenses made by the commission were proper and if they were whether the rate of return which would have been earned by the company under the rates prescribed by the commission was confiscatory.

In considering these questions it should be borne in mind that the computations made by the company for the purpose of ascertaining what the return would have been under the rates prescribed by the commission are predicated upon their experience under the abnormally high rates charged by the company. That is, the company has never had any experience under the rates proposed by the commission and we believe it to be a fundamental economic principle that if the rates fixed by the commission had been adopted by the company and put into effect the increased consumption of gas which would have resulted therefrom would have resulted in a materially increased revenue to the company for we believe that it will be recognized that the excessively high cost of distributing gas in the city of Kenton as compared to the same cost incurred in distributing gas in other Ohio communities arises at least in part by reason of the fact that the cost of gas to a consumer is so high that the consumption of gas is very materially restricted. These are fundamental principles which have been entirely ignored by the company in the elaborate calculations which they have prepared and upon which they rest their case.

**Specification of Assigned Errors Intended To Be Urged Under the Foregoing Heading at Page 18 of Its Brief (Appellant's Brief, p. 18).**

Appellant recites that the assignment of errors contains twenty-five paragraphs and that all the assignments of errors are to be urged and that the several assignments of error relate to the findings and order of appellee (affirmed by the Supreme Court of Ohio) and that they may be classified as follows:

1. That the commission improperly used annual reports that were not in evidence.

2. That it made improper eliminations of operating expenses.

3. That it denied the company a rehearing.

4. That the state Supreme Court did not make an independent judicial review of the law and the facts.

5. That the commission had no authority to fix a rate for any period longer than the two year term designated in the ordinance appealed from.

## SUMMARY OF ARGUMENT.

### I.

### THE EFFECT OF THE COMMISSION'S ORDER, AFFIRMED BY THE STATE COURT, ON THE EARNINGS OF THE COMPANY.

The period used by the commission for the purpose of determining reasonable rates for gas service furnished to the consumers of Kenton, Ohio, for the two-year ordinance period beginning August 16, 1929, and thereafter until February 16, 1933, was the year ending August 1, 1929, and being the year immediately preceding the effective date of the ordinance. The appellant admits (appellant's brief, p. 13) that the rate of return earned by it during this year, upon the basis of the operating expenses contended for by the appellant and using a property value of $189,856.56, was 7.54%. Upon the basis of the reduction in operating expenses made by the commission for this same period the rate of return earned by the company on the basis of its own computation would have been 12.27%. The appellant insists (appellant's brief, p. 39) that under the rates prescribed by the commission its return for the period would have been but 4.92% on the rate base. This admittedly is the least amount that would have been earned by the company under the commission's rates for in making its computation the appellant uses as a basis the quantity of gas sold

under its existing high rates, failing to recognize the well founded economic principle that had the commission's rates been in effect during the period the quantity of gas sold undoubtedly would have been materially increased with a resulting increase in income to the company and a corresponding increase in the rate of return. The appellant has had no actual experience under the commission's rates and its estimate as to the rate of return that it would have earned thereunder is necessarily inaccurate. It has been repeatedly recognized that an estimate of revenues that will be earned by a public utility is erroneous when it disregards the effect of a rate reduction.

*Re Chesapeake & Potomac Telephone Company,* P. U. R. 4, 1934 (N. S.), 346;
*Re Coast Counties Gas & Electric Company,* P. U. R., 1924C, 415;
*Re Indiana Fuel & Light Company,* P. U. R., 1921E, p. 381, paragraph 5;
*Re Castine Water Company,* P. U. R., 1924B, p. 529;
*Re Eastern Oregon Light & Power Company,* P. U. R., 1932A, p. 299;
*Columbia v. Watts Engineering Company,* P. U. R., 1915B, p. 921;
*Re Interstate Light & Power Company,* P. U. R., 1921E, p. 161;
*Re Duluth Street Railway Company,* P. U. R., 1928B, 228;
*Re Milwaukee Electric R. & Light Co.,* P. U. R., 1930C, 426;
*Re Community Telephone Company,* P. U. R., 1931C, 285;
*Benicia v. Benicia Water Company* (1923), 23 Cal. R. C. R., 213;
*Re Colorado Springs Light, Heat & Power Company,* P. U. R., 1916E, 650;

*Belleville v. St. Clair County Gas & Elec. Co.*, P. U. R., 1915F, 235, P. U. R., 1916B, 24;
*Woll v. Hullinger*, P. U. R., 1916D, 380;
*Re Central Illinois Public Service Company*, P. U. R., 1919E, 910;
*Re Illinois Gas Company*, P. U. R., 1921B, 430;
*In Re Kampsville Electric Light & Power Co.* (1921), 1 Ill., C. C. R., 51;
*Re United R. & Electric Co.*. P. U. R., 1928C, 604;
*Donham v. Public Service Commission*, P. U. R., 1919C, 880, 232, Mass., 309, 122 N. E., 397;
*In Re Increased Advance Rates*, 1921 (10 P. S. C. R. 2, District New York), 285;
*Re Portland Electric Power Company*, P. U. R., 1931E, 207;
*Re Nashville R. & Light Co.*, P. U. R., 1929A, 664;
*Department of Public Works ex rel. City of Friday Harbor v. Friday Harbor Light & P. Co.*, P. U. R., 1928E, 660.

The appellant argues that the appellee erred in failing to consider its actual experience during the fiscal year of 1929 and the succeeding years of 1930 and 1931. Again using the company's own computations and upon the same property value fixed at prices existing in 1929 it is found that the company earned a rate of return for the year 1929 of 7.53%, for the year 1930 of 6.66%, and for the year 1931 of 5.72%. (Appellant's brief, p. 13.) If the commission's operating expenses are applied to these same years the rate of return that would have been earned by the company on the same property value upon the basis of its own computations would have been for the year 1929, 12.08%, for the year 1930, 11.29% and for the year 1931, 10.77%, or an average for the period of

11.38%. The appellant then contends that had the commission's schedule of rates been in effect during these succeeding years its rate of return upon the basis of the property value made in 1929 of $189,856.56 would have been for the year 1929 4.74%, for the year 1930 4.23% and for the year 1931, 3.68% (appellant's brief, p. 41). These computations, of course, represent the minimum that would have been earned by the company under the commission's rates for the reason that they likewise are predicated upon the quantities of gas sold by the appellant under the existing high rates in effect at the time of the passage of the ordinance and they fail to give any consideration to the increased sales that undoubtedly would have resulted from a reduction in rates. The company has had no actual experience under the commission's rates and, therefore, its computations as to what it would have earned thereunder are necessarily inaccurate. These computations as to the earnings of the appellant under the commission's rates in the succeeding years are subject to a further frailty in that they fail to recognize any reduction in property values during the succeeding period and insist upon a rate of return based upon the valuation made at a 1929 price level. As a matter of fact the earnings of the company under the commission's rates had they been in effect for the entire period would have been materially greater than the amounts admitted to by the company in the light of all the circumstances and in view of the profound economic changes which have taken place during the period involved. In fact the rate of return which would have been earned by the company under these rates would not only have been non-confiscatory but it would have been exceedingly generous.

## II.

## APPELLANT'S OPERATING EXPENSES.

The amount allowed appellant for its total annual operating expenses was generous. The difference in operating expenses as claimed by the appellant and as allowed by the appellee for the year ending August 1, 1929, and being the period used by the commission for the purpose of testing the reasonableness of the ordinance rates for the succeeding two years totaled $8,968. This difference was occasioned by reductions made in the appellant's operating expenses by the appellee, as follows: Gas produced and purchased (cost of gas sold) $1957.00; general and miscellaneous expenses $2355.00. Retirement allowance or annual allowance for depreciation, $1535.00; amortization of pipe line $2983.00; state of Ohio excise tax, $81.00; federal income tax $57.00.

**Gas Produced and Purchased (Cost of Gas Sold).**

The reduction in this item is occasioned by the commission's reducing the amount claimed for unaccounted for gas from 10% to 5%. It is submitted that an allowance of 5% for unaccounted for gas is ample and sufficient based upon the knowledge and experience of an administrative commission informed as to such matters and, in fact, is as large or larger than the amount that

has been claimed by or allowed to other gas companies before the commission in recent gas cases.

*In the Matter of the Complaint and Appeal of the Columbus Gas & Fuel Company From an Ordinance of the City of Columbus, Ohio, to Fix the Price That May Be Charged For Natural Gas in the City of Columbus, Ohio, No. 5935;*
*Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio,* 127 O. S., 109, 187 N. E., 7;
*Columbus Gas & Fuel Company v. Public Utilities Comission of Ohio,* 292 U. S., 398, 54 S. Ct., 703, 78 L. Ed., 1327;
*In the Matter of the Complaint and Appeal of the East Ohio Gas Company No. 7130 Before the Public Utilities Commission of Ohio,* decided September 19, 1934.

**Distribution and Commercial Expense.**

The amount allowed by the commission for distribution and commercial expense was the exact amount claimed by the company for these items. The new business expense was likewise allowed in full as contended for by the company.

**General and Miscellaneous Expense.**

The differences between the company and the commission relating to general and miscellaneous expense aggregate $2355.00 for the year ending August 19, 1929. This difference arises primarily by virtue of the commission's method of allocating this expense upon a per customer basis as opposed to the appellant's contention that it should have been allocated upon a gas consumption basis.

It is admitted by the company that general and miscellaneous expenses are incurred generally by the company as a whole and include the expense of administration and other costs that have to do with the administration of the company. Certainly under the circumstances and where the company's general and miscellaneous expense is accepted by the commission without question and allocated to the various communities served by the company on a per customer basis, a fair and reasonable general and miscellaneous expense has been allowed to the company. As a matter of fact, the allowance by the commission for this particular item was exceedingly generous for it permitted the inclusion without any reduction whatsoever of amounts spent by the company for contributions for sustaining chambers of commerce, local charitable contributions, membership dues in national and state utility associations and traveling expenses to their conventions as well as an allowance for services supposedly rendered by the parent company.

Many of these allowances under the law should have been excluded from the operating expenses.

*Re New York Telephone Company*, P. U. R., 1932D, 20 (1932) (New York Public Service Commission);

*Re New York Telephone Company*, P. U. R., 1933C, 409 (Interstate Commerce Commission);

*Re Lone Star Gas Company*, P. U. R., 1932C, 1 (Oklahoma; Re Reservations, Contributions and Donations; Interest During Construction and Property Not Used in Operations ([D. C.]), P. U. R., 1930D, 113, 114;

*Herring v. Clarks Ferry Bridge Company* (Pennsylvania) P. U. R., 1926D, 514, 529;

*Idaho Power Company v. Thompson,* 19 Fed. (2d) 547, P. U. R., 1927D, 388 (Federal);
*Re Citizens Independent Telephone Company* (Indiana) (1929), P. U. R., 1930A, 431;
*Rock Port v. Clifton* (Missouri), P. U. R., 1927E, 470;
*Re Crystal City Gas Company* (New York), P. U. R., 1925E, 91;
*Re Southern California Edison Company,* P. U. R., 1924C, 1 (California);
*Municipal Gas Company v. Wichita Falls* (Texas), P. U. R., 1924B, 410;
*Re Idaho Power Company* (Idaho), P. U. R., 1924C, 731;
*Railroad Commissioners v. Hughes Electric Company* (N. D.), P. U. R., 1925A, 18.

There was also included in general and miscellaneous expenses for the year ending August 1, 1929, and allowed by the commission the sum of $4423.57 for rate case expense. This allowance represents almost 50% of the entire general and miscellaneous expense. Certainly the company does not insist that rate case expense is a recurring item of expense for the purpose of establishing confiscation.

*New York & Queens Gas Company v. Newton,* 269 Fed., 277;
*Reno Power, Light and Water Company v. Public Service Commission,* 298 Fed., 790;
*Columbus Gas & Fuel Company v. City of Columbus,* 17 Fed. (2d), 630;
*Public Utilities Reports Digest,* Volume 2, p. 1553.

So that the allowance of the commission for general and miscellaneous expense was not only ample but was generous and there were included in the allowance items which properly should have been excluded therefrom.

**Excise Tax.**

The company contends for an allowance of $660.00 for the year 1932 as a result of an increase in the excise tax expense for that particular year. This year was not used by the commission for the purpose of ascertaining the fair rates to be charged by the company during the period involved nor was this amount contended for by the company in its presentation of its case before the commission and we are unable to find any reference in the record to the amount claimed by the company.

**Retirement Reserve Allowance.**

The annual depreciation allowed by the appellee is ample and sufficient and exceeds the actual experience of the company for this item. The company insists upon the allowance of $4155.00 a year to cover its annual depreciation requirements. Presumably this allowance represents 3% of the total depreciable property based upon the company's book value. The commission allowed for this item the sum of $2620, being 1.4% of the depreciable property allocated to Kenton on the basis of the appraisal made by the commission. The actual experience of the company over a seven-year period from 1925 to 1931 as developed from the evidence produced in the Lima case shows an annual depreciation of less than 1% and on the basis of that charge the company has been able to accumulate $327,766.87 as an unexpended balance in depreciation reserve and amortization reserve as of

December 31, 1931, while at the same time keeping its property in excellent condition. Under the circumstances and in view of the company's own experience the amount allowed by the commission for this item was ample and sufficient.

*Smith v. Illinois Bell Telephone Company,* 282 U. S., 133, 75 L. Ed., 255;
*Dayton Power and Light Company v. Public Utilities Commission of Ohio,* 292 U. S., 290, 78 L. Ed., 1267;
*Columbus Gas and Fuel Company v. Public Utilities Commission of Ohio,* 292 U. S., 398, 78 L. Ed., 1327.

**Amortization of Pipeline.**

There is not the slightest justification for the inclusion in operating expenses of an annual allowance of $2983 for the purpose of amortizing a pipeline used by the company to convey natural gas to the consumers of Kenton when it is admitted that the transmission line is used and useful in the company's business and will continue so for an indefinite period in the future, and this is particularly true when it is realized that this same transmission line is at the present time maintained by the Ohio Fuel Gas Company under and by virtue of the terms of its contract with the West Ohio Gas Company and that, in addition, the entire value of the line allocable to Kenton is included in the base of depreciable property as fixed by the commission and on which an allowance of 1.4% as an annual depreciation charge was computed.

## III.

## RATE OF RETURN.

Upon the basis of the company's own computation (appellant's brief, p. 13) and using its own operating expenses, the company would have earned during the year ending August 1, 1929, a rate of return of 7.54%. Upon the same method of computation and using the same figures it would have earned during the years 1929, 1930 and 1931 a return of 7.53%, 6.66% and 5.72% respectively. Upon the basis of the same property value of $189,856.56 made at a price level existing in 1929 and upon the operating expenses as allowed by the commission the company would have earned for the year ending August 1, 1929, 12.27% for the year 1929, 12.08% for the year 1930, 11.29% and for the year 1931, 10.77%, or an average for the four-year period of 11.38%. These rates of return are based upon the company's own computations and upon the amount of gas sold by the company under the existing high rates. Actually under the commission's rates and recognizing the reduced value of appellant's property during the succeeding years a very materially increased rate of return would have been earned by the company during the period. The company admits (appellant's brief, p. 39) that under the commission rates it would have earned 4.92% on the rate base and (appellant's brief, p. 41) for the year 1929 it would have earned 4.74%, for the year 1930, 4.23% and for the

year 1931, 3.68% upon the same rate base. These computations of the company ignore entirely the increased return that would have been earned by the company had the commission's rates been in effect during the period resulting from increased gas sales which certainly would have resulted from a reduction in the gas rate. Its computations are based entirely upon its experience under its existing high rates and give no effect whatsoever to increased returns that would have been earned had the commission's reduced schedule of rates been in effect. They are, therefore, necessarily inaccurate and erroneous.

*Re Chesapeake & Potomac Telephone Company,* P. U. R. 4, 1934 (N. S.), 346;
*Re Coast Counties Gas & Electric Company,* P. U. R., 1924C, 415;
*Re Indiana Fuel & Light Company,* P. U. R., 1921E, p. 381, paragraph 5;
*Re Castine Water Company,* P. U. R., 1924B, p. 529;
*Re Eastern Oregon Light & Power Company,* P. U. R., 1932A, p. 299;
*Columbia v. Watts Engineering Company,* P. U. R., 1915B, p. 921;
*Re Interstate Light and Power Co.,* P. U. R., 1921E, p. 161;
*Re Duluth Street Railway Company,* P. U. R., 1928B, 228;
*Re Milwaukee Electric R. & Light Co.,* P. U. R., 1930C, 426;
*Re Community Telegraph Company,* P. U. R., 1931C, 285;
*Benicia v. Benicia Water Company* (1923), 23 Cal. R. C. R., 213;
*Re Colorado Springs Light, Heat & Power Company,* P. U. R., 1916E, 650;

*Belleville v. St. Clair County Gas & Elec. Co.*, P. U. R., 1915F, 235, P. U. R., 1916B, 24;
*Woll v. Hullinger*, P. U. R., 1916D, 380;
*Re Central Illinois Public Service Company*, P. U. R., 1919E, 910;
*Re Illinois Gas Company*, P. U. R., 1921B, 430;
*In Re Kampsville Electric Light & Power Co.* (1921), 1 Ill., C. C. R., 51;
*Re United R. & Electric Co.*, P. U. R., 1928C, 604;
*Donham v. Public Service Commission*, P. U. R., 1919C, 880, 232, Mass., 309, 122 N. E., 397;
*In Re Increased Advance Rates*, 1921 (10 P. S. C. R. 2, District New York), 285;
*Re Portland Electric Power Company*, P. U. R., 1931E, 207;
*Re Nashville R. & Light Co.*, P. U. R., 1929A, 664;
*Department of Public Works ex rel. City of Friday Harbor v. Friday Harbor Light & P. Co.*, P. U. R., 1928E, 660.

These computations of the company likewise ignore the fact that the price level used in the valuation of this property was much higher in 1929 than it would have been in any of the succeeding years and that had the computations been made on the actual value of the property during the succeeding period and in the light of the profound economic changes which have taken place during that time the rate of return which they estimate as a minimum would have been materially increased. The company entirely disregards the business depression of which this court has taken judicial notice. *Los Angeles Gas & Electric Corporation v. Railroad Commission of the State of California*, 289 U. S., 287, 77 L. Ed., 1180; *Atchison, T. & S. F. R. Co. v. United States*, (1932) 284

U. S., 248, 260, 262, 76 L. Ed., 273, 52 S. Ct., 146; *Dayton Power and Light Company v. Public Utilities Commission of Ohio,* 292 U. S., 290, 78 L. Ed., 1267. Other courts likewise have recognized this period of economic stress in the reduced rates which they have approved as non-confiscatory for public service corporations.

*Smith v. Illinois Bell Telephone Company,* 282 U. S., 133, 75 L. Ed., 255;
*Illinois Bell Telephone Company v. Gilbert,* 3 Fed. Supp., 595 (1933);
*Re Yonkers Railroad,* P. U. R., 1933B, 61 (1932) (New York Public Service Commission);
*Re Kentucky-Tennessee L. & P. Company,* P. U. R., 1932E, 386, 393 (Tenn.);
*In re Chesapeake & Potomac Telephone Co.,* P. U. R., 1933E, 193 (P. U. C. of D. C.);
*In re Northwestern Electric Company,* P. U. R., 1933A, 493 (1932) (Oregon commission);
*In re West Coast Telephone Company,* P. U. R., 1933A, 487 (1932) (Washington Department of Public Works);
*Re Lone Star Gas Company,* P. U. R., 1933C, 1 (Oklahoma Commission);
*City of Charleston v. Public Service Commission,* P. U. R., 1931E, 74 (1931) (West Va. Supreme Court of Appeals);
*Kankakee Water Co. v. Gilbert,* P. U. R., 1933B, 145 (1933) (U. S. D. C. E. D. Illinois);
*Ohio Associated Telephone Co. v. Frank W. Geiger,* 3 Fed. Supp., 997, P. U. R., 1933E, 491 (1933).

In insisting upon an 8% rate of return the appellant ignores the recent decisions of this court which illustrate the fact that the necessary and proper result of the application of the law is to reduce the fair rate of return

for utilities in times of economic depression such as has prevailed throughout the life of the ordinance under discussion.

*Los Angeles Gas and Electric Company v. Railroad Commission of the State of California,* 289 U. S., 287, 319 (1933);

*Wabash Valley Electric Company v. Young,* 287 U. S., 488-501 (1933);

*Smith v. Illinois Bell Telephone Company,* 282 U. S., 133, 75 L. Ed., 255 (1930);

*Dayton Power and Light Company v. Public Utilities Commission of Ohio,* 292 U. S., 290, 78 L. Ed., 1267 (1934);

*Columbus Gas and Fuel Company v. Public Utilities Commission of Ohio,* 292 U. S., 398, 78 L. Ed., 1327 (1934).

Certainly the value of the company's property which was made on the basis of prices existing on August 15, 1929, would not be as great during any of the succeeding years of the ordinance period and thereafter as it was at the time the valuation was made and yet in spite of all this the appellant insists upon a high rate of return upon a valuation made at a price level existing August 15, 1929, and in its attempt to prove confiscation of its property it computes the rate of return which would have been earned under the commission's rates upon the basis of the gas sold by it under its existing high rates and entirely ignores the increased revenue which would have undoubtedly accrued to it from a reduction in the price of their commodity. As a matter of fact the company has never had any experience under the rates proposed by the commission and has continued throughout the period of litigation to collect the high rates formerly in effect. Its estimates as to what effect this would have on its rate of return is inaccurate and erroneous.

## IV.

## THE ANNUAL REPORTS FOR THE YEARS 1928-1930, INCLUSIVE, FILED WITH THE COMMISSION BY THE COMPANY PURSUANT TO THE PROVISIONS OF THE OHIO STATUTES AND PUT IN EVIDENCE AS COMMISSION EXHIBITS 1, 2 AND 3, BY ORDER OF THE COMMISSION ON ITS OWN MOTION.

The company contends that the decision of the commission was based upon evidence not properly introduced in the record and argues that the commission resorted to the use of annual reports filed with the commission by the company pursuant to the provisions of the Ohio statutes. The record clearly discloses that these reports were put in evidence by the commission upon its own motion and that the company does not now urge that any of the information contained therein was prejudicial to it or incorrect. As a matter of fact, when the company filed its application for a rehearing before the commission its only objection to the introduction of these reports was that the reports for 1931 and 1932 had not been included. It did not object to the contents of the reports or allege in what manner it was prejudiced by their being placed in the record. Not having raised this question in its application for a rehearing, under the Ohio statutes, Section 543, General Code, it was not entitled to raise it in the Supreme Court of Ohio. It is perfectly obvious,

however, that the company was treated entirely fairly in the use of these annual reports and the principle of due process of law was not violated by the commission's including them in the record.

*Snyder v. Massachusetts,* 291 U. S., 97, 78 L. Ed., 674.

## V.

## VARIOUS OTHER CONTENTIONS ADVANCED BY APPELLANT.

The appellant contends that the court erred in not finding that the validity of the rate order must be determined by its effect on net earnings from year to year and that the rate order and the order to refund were invalid because this requirement had not been complied with. The only order of refund contained in the commission's finding was to the effect that the company should pay back to the consumers the difference between the rates found by the commission to be reasonable and the rates collected by the company for the period involved. When it is considered that the finding of the commission was to the effect that under the commission's rates the company would have earned a fair rate of return for each year in the ordinance period as well as for the succeeding period up to February 16, 1933, it will be recognized that the commission acted properly and that the company was not injured thereby. If the rates prescribed by the commission would yield to the company a fair rate of return

during the entire period involved the company has no complaint.

The contention that the state Supreme Court erred in not holding that the rate order is invalid because the commission refused to grant the company a rehearing.

There was no basis upon which the company should have been granted a rehearing and to have further delayed the case for the purpose of granting a rehearing would have been improper.

The contention that the state Supreme Court did not make that independent judicial review of the law and the facts which due process and equal protection of the laws require.

This contention seems to be a part of the recognized formula followed by all utilities when appeal is taken to this court.

> *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio,* 292 U. S., 398, 54 S. Ct., 703, 78 L. Ed., 1327;
> *Dayton Power and Light Company v. Public Utilities Commission of Ohio,* 292 U. S., 290, 78 L. Ed., 1267.

The decision of this court in the Columbus Gas case supra (1934) holding that the Supreme Court of the United States will presume in reviewing a decision of a state court that the testimony in the record was given due consideration effectively disposes of this contention of the appellant.

The contention that the state Supreme Court erred in not holding that on a statutory appeal from a municipal

rate ordinance the commission was without power to change existing rates for any period longer than the period designated in the ordinance.

Under the laws of Ohio (G. C., 614-23) the commission has the power upon its own motion to hold hearings and to fix reasonable rates for a utility. At the time it rendered its decision in this case the ordinance period had expired and it was entirely reasonable and proper for the commission to find the reasonable rates for the company not only for the ordinance period but for the elapsed period following the ordinance, pursuant to the provisions of the foregoing statute.

## ARGUMENT.

### I.

### THE EFFECT OF THE COMMISSION'S ORDER, AFFIRMED BY THE STATE COURT, ON THE EARNINGS OF THE COMPANY.

The period used by the commission for the purpose of ascertaining the reasonableness of the rates to be effective during the ordinance period was the year ending August 1, 1929, and was the twelve month period immediately preceding the effective date of the ordinance.

Upon the basis of the company's own computations its net earnings during that year were $14,321.84 which earnings upon a rate base of $189,856.56 would have produced to the company a rate of return of 7.54%. These earnings were computed upon the operating expenses as contended for by the company. If the operating expenses as allowed by the commission were used upon the basis of the same figures the net earnings to the company for this period would have been $23,290 and would have produced a rate of return of 12.27% upon a property value of $189,856.56. It should be perfectly apparent that even upon the company's own computation such a rate of return is excessive, and that is the rate of return that would have been earned by the company upon the basis of the actual amount of gas sold by them under the righ rates which they had in effect

during the period. It therefore was obvious to the commission that some reduction in the rates being charged by the company which permitted a rate of return to be earned as hereinbefore indicated was necessary. The commission accordingly ordered a reduction in the rates to be charged in Kenton for the ordinance period and thereafter until February 16, 1933.

The company then argues that if the commission rates had been in effect during the same period and upon the basis of the gas sold by them under their existing rates the net return would have been but 4.92% on the rate base. (Appellant's brief, p. 39.) This argument fails to recognize the fact that had the commission's rates been in effect during the same period that an increase in gas consumption would have inevitably resulted for we believe that it is a well established economic principle that with a reduction in the price of gas sold the consumption of gas increases. Certainly there can be no other basis of explaining a distribution cost in the city of Kenton which approximates 60¢ per thousand cubic feet when gas is being distributed in other cities in Ohio, such as Columbus, North Hampton, Piqua, Sidney, South Charleston, Tippecanoe City, Troy, Washington C. H. and Wilberforce, Ohio, at a distribution expense of from 16¢ to 18¢ per thousand cubic feet. *The Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio, supra; The Dayton Power and Light Co. v. Public Utilities Commission of Ohio, supra.* The company insists, however, in computing the rate of return which it would have earned under the commission's rates on the basis of the gas sold

under its extraordinary high rates. That such a contention is unsound has been recognized by many courts and commissions. In the very recent decision of the District of Columbia Public Utilities Commission in *Re Chesapeake & Potomac Telephone Company* (P. U. R. 4, New Series, 1934, p. 346), issued on the thirty-first day of March, 1934, we find the following statement in the syllabus:

> "8. Estimation of revenues of a telephone company which disregarded the effect of a rate reduction ordered by the commission but stayed pending litigation, was held erroneous in that it assumed (1) that discontinuing subscribers would have done so even if the reduction had been in effect; (2) that there would have been no increase in subscribers under reduced rates, and (3) that subscribers would not have made greater use of their service under reduced rates."

And at page 359 that commission in discussing this topic says:

> "In estimating the net telephone revenue for the period subsequent to the effective date of our order No. 1072 (P. U. R. 1932E, 193), purely mathematical methods were used and it was assumed (1) that all those subscribers who discontinued their telephones would have done so regardless of the decreased cost to them had order No. 1072, supra, been put into effect; (2) that no greater number of new subscribers could have been secured under the lower rates prescribed in order No. 1072, supra, than were secured under the higher rate; (3) that those subscribers who did continue their service would not have made greater use of it, to the financial advantage of the telephone company. Such assumptions, in our opinion, would result in a minimum estimate

of revenue obtainable under our order No. 1072, supra, and are contrary to good reasoning."

In *Re Coast Counties Gas & Electric Company*, P. U. R. 1924C, 415, it was held at paragraph 17 of the syllabus as follows:

"The fact that a modification in rates will encourage the growth of business should be given due consideration."

In *Re Indiana Fuel & Light Company*, P. U. R. 1921E, p. 381, paragraph 5 of the syllabus provides that:

"A commission should take into consideration the fact that excessive rates for gas are likely to result in a falling off of consumption and consequently no financial benefit from the increase."

And in *Re Castine Water Company*, P. U. R. 1924B, p. 529, it was held in paragraph 1 of the syllabus that:

"Rates must be fair to the utility and to the consumers as well, and rates should not be established which would result in placing an undue burden upon consumers and thereby result in decreased revenue."

And in *Re Eastern Oregon Light & Power Company*, P. U. R. 1932A, p. 299, it was held that:

"Rates of an electric utility were ordered to be reduced where evidence indicated that such a reduction would benefit not only the public but also the utility by stimulating patronage through the use of a promotional rate structure."

In *Columbia v. Watts Engineering Company,* P. U. R. 1915B, p. 921, the commission held in the last paragraph of the syllabus, p. 922, that:

> "A reduction in the rates of a gas company was ordered although the present rates were yielding an inadequate return, it appearing to the commission from a comparison of the rates charged in other cities that the present rates of the company were so unreasonably high as to be the cause of the insufficient return, and that a reduction would enable the company to increase its sales and better utilize the productive capacity of its plant."

And in *Re Interstate Light & Power Company,* P. U. R. 1921E, p. 161, the Wisconsin Public Service Commission held that rates sufficient to produce a full return should not be allowed when this would probably result in a discontinuance by some consumers because the rates are in excess of the value of the service and this same commission held in *Re Duluth Street Railway Company,* P. U. R. 1928B, 228, and in *Re Milwaukee Electric R. & Light Co.,* P. U. R. 1930C, 426, that rates of fare should not be established to produce theoretical returns when their practical application is likely to restrict traffic they are so greatly as to defeat their own purpose and this commission again in 1931 held in *Re Community Telegraph Company,* P. U .R. 1931C, 285, that though a telephone utility admittedly was not earning a full return, it should not be permitted to put into effect rates for rural service in excess of the value of the service to such consumers which would have the effect of further diminishing patronage, thereby reducing the value of the service to

remaining subscribers and lowering rather than increasing the net earnings of the company. In this same connection we should like to cite the following additional cases:

*Benicia v. Benicia Water Company* (1923), 23 Cal. R. C. R., 213;
*Re Colorado Springs Light, Heat & Power Company*, P. U. R. 1916E, 650;
*Belleville v. St. Clair County Gas & Elec. Co.*, P. U. R. 1915F, 235, P. U. R. 1916B, 24;
*Woll v. Hullinger*, P. U. R. 1916D, 380;
*Re Central Illinois Public Service Company*, P. U. R. 1919E, 910;
*Re Illinois Gas Company*, P. U. R. 1921B, 430;
*In Re Kampsville Electric Light & Power Co.* (1921), 1 Ill., C. C. R., 51;
*Re United R. & Electric Co.*, P. U. R. 1928C, 604;
*Donham v. Public Service Commission*, P. U. R. 1919C, 880, 232 Mass., 309, 122 N. E., 397;
*In Re Increased Advance Rates*, 1921 (10 P. S. C. R. 2, District New York), 285;
*Re Portland Electric Power Company*, P. U. R. 1931E, 207;
*Re Nashville R. & Light Co.*, P. U. R. 1929A, 664;
*Department of Public Works ex rel. City of Friday Harbor v. Friday Harbor Light & P. Co.*, P. U. R. 1928E, 660.

It must be remembered that there is no evidence in the record as to what the experience of the company would have been under the commission rates for throughout the period of this litigation the company has continued to charge the rates which it had in effect prior to the enactment of the ordinance by the city of Kenton, Ohio. Any estimate, therefore, as to what rate of return it would have earned under the commission rates based

upon the amount of gas which it sold under its own rates ignores well recognized principles and is necessarily inaccurate.

The company further contends that the commission should have considered its experience during the succeeding years of 1929, 1930 and 1931 and it sets forth at page 13 of its brief (appellant's brief, p. 13), that on the basis of its computation its return during those years was 7.53% for the year 1929, 6.66% for the year 1930 and 5.72% for the year 1931. If the commission's reduction in operating expenses is considered these returns upon the basis of the company's computations for the same years would have been 1929, 12.08%; 1930, 11.29%, and 1931, 10.77% or an average of 11.38% for the entire period.

The company further urges that on the basis of the commission's rates its earnings during these subsequent years of 1929, 1930 and 1931 would have been for the year 1929 4.74%, for the year 1930, 4.23% and for the year 1931 3.68%. We cannot agree with this estimate of earnings as contended for by the company but even if we were to admit that the earnings during these subsequent years were exactly as the company contends, these earnings would be subject to the same frailty heretofore discussed respecting the period ending August 1, 1929, that is, that the computations are all predicated upon quantities of gas sold under the company's high rates and give no effect to increased earnings which would undoubtedly have accrued from increased consumption resulting from a reduction in its rate schedule.

These earnings as contended for by the company in the subsequent years furthermore give no consideration whatsoever to the reduced value of its property devoted to the public service in those same years. In other words, the contention of the company is that its earnings during the year 1929, 1930 and 1931 decreased because of the business depression but it fails to give any consideration to a decrease in the value of the rate base arising from the same cause. We believe, therefore, it is perfectly apparent that the earnings as estimated by the company and set forth in its brief at page 40 and 41 (Appellant's Brief, pp. 40 and 41) under the rates prescribed by the commission loses all sight of these important factors and are necessarily inaccurate and we believe it will be equally well recognized that the earnings during this same period would have been materially greater than those which the company admits it would have earned on the basis of the commission's prescribed schedule of rates had that schedule been in effect during the period.

## II.

## APPELLANT'S OPERATING EXPENSES.

The importance of determining the proper amount to be allowed as operating expenses has been recognized by this court in the recent case of *Lindheimer v. Illinois Bell Telephone Company*, 292 U. S., 151, 54 S. Ct., 658, 78 L. Ed., 1182 (1934) wherein it held at paragraph 3 of the syllabus:

> "3. Charges to operating expenses may be as important as valuations of property in determining whether a public service commission's order establishing rates for telephone service is confiscatory."

The difference in the annual operating expenses as claimed by appellant and as allowed by appellee for the year ending August 1, 1929, and being the period used by the commission for the purpose of determining the fairness of the company's rates for gas service in Kenton, is $8968.00. The items comprising this difference are set forth at page 8, supra. Of the total difference $2983.20 results from the disallowance by the commission of the amount claimed by the company for amortizing a pipe line which is admittedly used and useful with an unestimable future life, maintained by the Ohio Fuel Gas Company, and which is included in the total value of depreciable property upon which an annual allowance of 1.4% is allowed to the company in its annual depreciation expense. The sum of $1534.84 results from a reduction in the amount claimed by the company for

its annual depreciation allowance, the company contending that it should be allowed 3% of its total depreciable property for this item and the commission allowing 1.4% of the total depreciable property. A reduction in cost of gas sold totaling $1956.84 resulting from a reduction by the commission in the amount claimed by the company for unaccounted for gas. A reduction in general and miscellaneous expenses totaling $2354.37 as a result of using a per customer method of allocation as opposed to a gas consumption method as used by the company. A reduction of $81.69 in excise tax, and a reduction of $57.48 in Federal income tax. All other operating expenses as contended for by the company were allowed by the commission.

**1. Gas Produced and Purchased (Cost of Gas Sold).**

The company purchases the gas which it furnishes to the consumers of Kenton, Ohio, from the Ohio Fuel Gas Company at a wholesale price of 55¢ per thousand cubic feet. While the commission was of the opinion that this was an excessive price to pay for gas so purchased it felt that it was powerless to interfere with this wholesale rate made between the two companies because they were not affiliated companies and the contract was apparently made at arm's length. The commission, therefore, in computing the cost of gas sold allowed the company the entire amount of 55¢ per thousand cubic feet on the basis of its contract but it reduced the amount of this item by disallowing the full amount claimed by the company

for unaccounted for gas. It was the contention of the company that 10% of its gas was unaccounted for and that this amount should be added to the cost of gas purchased and, consequently, to the cost of gas sold. The commission in the light of its experience and on the basis of its information as to such matters felt that the amount claimed by the company was excessive and, furthermore, that this amount was not sustained by the evidence introduced by the company at the hearing. It accordingly reduced the amount of this item from 10% to 5%. The company in its brief (Appellant's Brief, pp. 49-50) insists that the evidence clearly established a loss of 10%, however, witness Heyser, testifying as to this item at pages 119, et seq., is unable to state with any degree of definiteness just what a normal loss of gas should be and Mr. Frank L. Pringle, the only other witness for the company who testified on this subject, stated that the exhibit to which he was referring did not show any record for the amount of unaccounted for gas. (R., p. 155.) Upon the basis of the testimony of these two witnesses, upon whom the company relies for the purpose of establishing an arbitrary figure of 10% for unaccounted for gas, we believe that the commission was fully justified in finding that the amount claimed was excessive and that 5% should be an ample allowance for this particular item.

In the case of the Columbus Gas Company *(In the Matter of the Complaint and Appeal of the Columbus Gas & Fuel Company From an Ordinance of the City of Columbus, Ohio, to Fix the Price that May Be Charged For Natural Gas in the City of Columbus, Ohio, No. 5935)*, the

company claimed only 6½% for unaccounted for gas and the commission allowed but 5% for this item. This allowance was approved by the Supreme Court of Ohio, *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio,* 127 O. S., 109, 187 N. E., 7, and the findings of that court in that regard were not disturbed when the case was presented to this court. *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio,* 292 U. S., 398, 54 S. Ct., 703, 78 L. Ed., 1327.

In the case of the East Ohio Gas Company *(In the Matter of the Complaint and Appeal of The East Ohio Gas Company, No. 7130 Before The Public Utilities Commission of Ohio),* decided by the commission on the nineteenth day of September, 1934, the company voluntarily made the statement that leakage in the East Ohio Gas system amounted to only 3½%.

Certainly the commission, in the light of its knowledge and in exercise of its discretion as an administrative body does not have to accept the flat assertion of the company as to the amount of unaccounted for gas that may be included in its operating expenses and that is particularly true when the testimony of the company to support such an assertion is no more convincing than was presented to the commission in this case.

**2. Distribution and Commercial Expense.**

The company claimed an allowance of $3478.00 for distribution expense. The commission allowed the claim of the company for this expense in full. The company contended for an allowance of $3156.00 for commercial expense. The commission allowed this claim in full in the sum of $3156.00.

The only complaint of the company in this connection apparently is based on the fact that in the Lima case the commission had allocated these expenses on a per customer basis and that this procedure was not followed in this case. This argument would have greater weight in this case if the company were insisting upon the commission following the per customer method of allocation. They submitted, however, that the entire amount of the distribution expenses and commercial expenses were included in their claims and the commission in allowing these claims in full did not err.

In this same connection we should like to call the court's attention to the fact that new business expense in the sum of $1148.00 was allowed in full by the commission whereas if the per customer method of allocating this expense had been used the amount allocable to Kenton would have been considerably reduced.

### 3. General and Miscellaneous Expense.

The company claimed as a proper allowance for its general and miscellaneous expense the sum of $10,980.00. The commission allowed for this item the sum of $8625.00, the difference being $2355.00. As a matter of fact, the commission's allowance totaling $8625.00 for general and miscellaneous expense was exceedingly generous and this, we believe, will be recognized when it is considered that there were included in this item contributions to annual local charitable institutions, occasional civic and charitable contributions, contributions for sustaining chambers of commerce, and other donations, chamber of commerce membership dues, other association expenses, rate case expense and fees paid to the Midland Utilities Company, the parent company of the West Ohio Gas Company. Actually the rate case expense alone chargeable to general and miscellaneous expense for the year ending August 1, 1929, was $4423.57 or almost one-half of the entire general and miscellaneous expense. Certainly the company does not contend that such an expense is a recurring item which should be included for the purpose of determining whether or not a rate will be confiscatory and we believe the law is very well established that the contributions to which reference has been made are not properly allowable in operating expenses. This proposition is fully discussed in the brief submitted on behalf of the appellee in the Lima case at pages 47-52 and the discussion of the impropriety of including rate case expense for the purpose of establishing confiscation is discussed in that same brief at pages 52-55. We shall, therefore, not discuss this item further in this brief.

**4. Excise Tax Expense.**

The company contends that the amount of the increased excise tax for the year 1932 would have been $660.00. We are unable to find any reference in the record to any such item either in the exhibits introduced on behalf of the company or on the testimony of the company's witnesses. We shall, therefore, not discuss the matter further.

**5. Retirement Reserve Allowance.**

The amount allowed the company by the commission for retirement reserve allowance was $2620.00. The amount contended for by the company for this same item was $4155.00. There was, therefore, a difference of $1535.00 in the amount claimed by the company and the amount allowed by the commission for this expense of annual depreciation. The company's contention was apparently based upon an allowance of 3% of depreciable property as shown by the books of the company. The commission allowed 1.4% of the appraised value of the depreciable property. While there was no testimony introduced in this case as to the actual experience of the company in this connection the testimony in the Lima case relating to the experience of this company as a whole was to the effect that the expense of annual depreciation over a period of more than seven years had been actually less than 1%. In the light of all the circumstances it is evident that the commission's allowance for annual depreciation reserve in this case was ample and sufficient.

For a discussion of the general principles applicable we refer the court to our brief in the Lima case, (pp. 57-62).

6. **Amortization of Pipeline.**

The situation with reference to this item and the elimination by the commission of the allowance contended for by the company is identical with the situation that we discussed on pages 63-66 of our argument in the Lima case. For the same reasons there pointed out the disallowance of this item was absolutely proper and for the commission to have included the item would have been erroneous and unsound.

## III.

## RATE OF RETURN.

It has been previously pointed out in this brief that upon the basis of the company's own computations (Appellant's Brief, p. 13) a rate of return for the year ending August 1, 1929, of 7.54% would have been earned by the company. It has also been demonstrated that upon the basis of the company's own figures and on the operating expenses allowed by the commission this rate of return would have been 12.27%. We believe that the reduction made in the company's operating expenses by the commission were fully justified and it should be equally well recognized that a rate of return of 12.27% is excessive. It was, therefore, incumbent upon the commis-

sion to reduce the rates being collected by the company for gas service in Kenton, Ohio, to a more nearly equitable level. The commission accordingly prescribed a schedule of rates which, in its opinion, would produce in earnings to the company a fair rate of return and, certainly, one which would not be confiscatory. The company contends, however (Appellant's Brief, p. 39), that had such rates been in effect their earnings would have been but 4.92% on the rate base. The company having admited to earnings of 4.92% on the rate base we believe that it is fair to assume that this is the least amount that would have been earned by them under the commission's rates. It should be remembered that in arriving at its computation of 4.92% as the rate of return which would have accrued to the company under the commission's rates, had they been in effect for the year ending August 1, 1929, the company gives no consideration whatever to the well recognized economic principle that with a reduction in the rates of gas furnished to the consumers of Kenton, Ohio, there would inevitably have occurred an increase in the consumption of that gas so that as a matter of fact the rate of return undoubtedly would have been greater than the minimum amount computed by the company of 4.92%. The company has had no actual experience under the commission's rates and when it insists that its rate of return under those rates would have been 4.92% it is basing its conclusion upon a pure estimate which is not supported by the facts nor by any experience which the company has incurred.

Under the heading of "The effect of the commission's

order, affirmed by the state court, on the earnings of the company'' we have cited many decisions sustaining this proposition and we should like again to refer this court particularly to the very recent decision (March, 1934) of the District of Columbia Public Utilities Commission in *Re Chesapeake & Potomac Telephone Company* (P. U. R. 4 [New Series], 1934, p. 346), wherein it was specifically held that:

> ''Estimation of revenues of a telephone company which disregarded the effect of a rate reduction ordered by the commission but stayed pending litigation, was held erroneous in that it assumed (1) that discontinuing subscribers would have done so even if the reduction had been in effect; (2) that there would have been no increase in subscribers under reduced rates, and (3) that subscribers would not have made greater use of their service under reduced rates.''

This case is directly in point with the proposition which is here advanced. The company is insisting upon computing the rate of return which it would have earned under the commission's rates upon the basis of its experience under a schedule of rates considerably higher, no consideration being given at all to the possibilities of increased consumption and resulting increased income that unquestionably would have resulted had the rates prescribed by the commission been placed in effect.

While the inquiry of the commission was limited in the determination of what would constitute fair rates for the two year ordinance period to the experience of the company for the period ending August 1, 1929, the

company insists that the commission erred in that it should have included the years 1929, 1930 and 1931 in its findings for the purpose of determining what would have been the effect on its earnings under the commission rates during these succeeding years.

Again taking the company's own computations (appellant's brief, p. 13) we find that for the year 1929 the company enjoyed a rate of return of 7.53%. If the operating expenses allowed by the commission were in effect during this same year this rate of return would have been increased to 12.08%. For the year 1930 the company contends that its earnings were 6.66%. If the reduction in operating expenses made by the commission are considered for this year these earnings were 11.29% and for the year 1931 the company says that on the basis of its computations its earnings were for that year 5.72%. If the reductions in operating expenses of the commission are considered its earnings during this year were 10.77%. In other words, for the four year period and upon the basis of the company's own computations and using the operating expenses allowed by the commission the average return of the company was 11.38%. We do not believe that it can be seriously urged that such a rate of return covering a period from 1929 to 1931, inclusive, can be considered as anything less than excessive and it should be further remembered that these returns were all earned upon a valuation base made as of August 15, 1929, and upon the basis of prices then existing. Certainly, the company does not seriously urge that the value of its property for rate making purposes remained

the same during the succeeding years in view of the profound economic changes which had taken place during that period. As a matter of fact, the company is insisting upon the commission's recognizing the depression in considering its return for the years 1930 and 1931, pointing out that its revenues decreased during the period because of that fact while at the same time it insists upon a rate of return upon a property value made probably near the peak of prices. In view of these circumstances a reduction in the rates being collected in the city of Kenton for gas service was essential.

At page 41 of its brief (appellant's brief, p. 41), the company estimates that upon the basis of the rates prescribed by the commission it would have earned for the year 1929 a return of 4.74% upon its valuation base; a return of 4.23% during the year 1930 and a return of 3.68% during the year 1931. Again the company loses sight of the fact that these computations are all predicated upon the assumption that the amount of gas sold would have been the same under the commission rates as under the high rates charged by the company. In other words, it gives no effect at all to the fact that undoubtedly its sales would have increased under a lower schedule of rates. Its calculations, therefore, are not based upon any actual experience of the company under the commission's rates and do not speak correctly in so far as reflecting what might have been the return had the rates prescribed by the commission been put in effect. These computations have a further weakness in that in addition to being computed upon the basis of the com-

pany's sales under a high schedule of rates they are based upon a rate of return that would have been earned under the high valuation made as of August 15, 1929, so that, in fact, these computations of the company do not reflect the actual experience or the actual rate of return that would have been enjoyed by the company under the commission's rates and upon the fair value of its property during the succeeding years.

In addition to this, however, we cannot subscribe fully to the actual computations made by the company. We have prepared, therefore, a table (Table 2, p. 51) which consists of a rate study showing first the results for the year ending August 1, 1929, and, second, the results for the years 1929, 1930 and 1931, and the average for those three years. The rate of return as shown on line 17 reflects the rate based upon revenues from the commission's rates and expenses as allowed by the commission. The rate of return shown on line 21 reflects the rate based upon revenues under the company's rates and expenses as allowed by the commission. Attention is called under Note B to the fact that certain unallowable expenses included by the company in its item of general and miscellaneous expense were not excluded by the commission and had such items been excluded the rate of return in each of the periods would have been greater to the extent of 1.69% for the year ending August 1, 1929, 2.30% for the year 1929, 1.04% for the year 1930, .84% for the year 1931, and 1.39% average for the years 1929 to 1931.

TABLE NO. 2. RATE STUDY.

| | | Quantity | Year Ended 8-1-29 | Year 1929 | Year 1930 | Year 1931 | Average 1929-1931 | Reference and Explanation. |
|---|---|---|---|---|---|---|---|---|
| | 1 | M. c. f. of gas sold in Kenton | $63,421.2 | $65,120.6 | $59,616.1 | $51,946.3 | $58,894.3 | Transcript pages 162, 163, 164 and 165. |
| | | REVENUES | | | | | | |
| a. | 2 | Gross revenues from gas service in Kenton under Comm.'s rates | $70,850. | $72,054. | $67,155. | 60,403. | 66,537. | Company's brief page 41. |
| | | EXPENSES | | | | | | |
| | 3 | Cost of gas sold | 36,717. | 37,778. | 36,953. | 31,780. | 35,504. | 94.94% of gas purchased per transcript page 161. |
| | 4 | Distribution expense | 3,478. | 3,532. | 3,027. | 2,983. | 3,181. | Company's amount, transcript page 161. |
| | 5 | Commercial expense | 3,156. | 3,282. | 3,000. | 3,113. | 3,132. | Company's amount, transcript page 161. |
| | 6 | New business expense | 1,148. | 1,569. | 1,151. | 1,664. | 1,461. | Company's amount, transcript page 161. |
| b. | 7 | General and miscel. expense | 8,625. | 8,766. | 7,677. | 6,336. | 7,593. | Per customer aver.—1929, $4.53; 1930, $4.06; 1931, $3.44. |
| | 8 | Indirect charges to const.—Cr. | ( 216.) | ( 221.) | (1,100.) | (303.) | (541.) | Company's amount, transcript page 161. |
| | 9 | Depreciation | 2,620. | 2,620. | 2,620. | 2,620. | 2,620. | 1.4% of $187,136. depreciable property at 8-15-29. |
| | 10 | Real and personal prop. taxes | 2,538. | 2,717. | 2,840. | 2,260. | 2,605. | Company's amount, transcript page 161. |
| | 11 | Ohio excise tax | 1,145. | 1,164. | 1,085. | 976. | 1,075. | 1.35% of Company's revenues, transcript page 161. |
| | 12 | P. U. C. O. tax | 48. | 46. | 46. | 46. | 46. | Company's amount, transcript page 161. |
| c. | 13 | Income tax | 1,752. | 1,520. | 1,208. | ..... | 909. | Proportion based upon revenues of income taxes accrued. |
| | 14 | Uncollectible accounts | 486. | 521. | 407. | 362. | 430. | Company's amount, transcript page 161. |
| a. | 15 | Total expenses | $61,497. | $63,294. | $58,914. | $51,837. | $58,015. | |
| | | NET INCOME | | | | | | |
| a. | 16 | Net income, line 2 less line 15 | $9,353. | $8,760. | $8,241. | $8,566. | $8,522. | |

| | | Year Ended 8-1-29 | Year 1929 | Year 1930 | Year 1931 | Average 1929-1931 | Reference and Explanation. |
|---|---|---|---|---|---|---|---|
| | QUANTITY RATE OF RETURN | | | | | | |
| 17 | Based upon Commission's valuation of $189,856.56 as of August 15, 1929, and net income shown on line 16, and predicated upon the cubic feet of gas sold under the company's rates..... | 4.92% | 4.61% | 4.34% | 4.51% | 4.49% | |
| | Notes:— | | | | | | |
| a. | Based upon revenues under Company's rates derived from the cubic feet of gas actually sold, and upon expenses allowed by the Commission, results would be as follows: | | | | | | |
| 18 | Company's revenues per transcript page 161 ..... | $84,787. | $86,220. | $80,357. | $72,278. | $79,618. | |
| 19 | Commission's expenses per line 15 above ..... | 61,497. | 63,294. | 58,914. | 51,837. | 58,015. | |
| 20 | Net Income..... | $23,290. | $22,926. | $21,443. | $20,441. | $21,603. | |
| 21 | Rate of return on $189,856.56 valuation ..... | 12.27% | 12.08% | 11.29% | 10.77% | 11.38% | |

| | | Year Ended 8-1-29 | Year 1929 | Year 1930 | Year 1931 | Average 1929-1931 |
|---|---|---|---|---|---|---|
| b. | By using the per customer method, the Commission has reduced the General and Miscellaneous Expenses claimed by the Company to the extent of..... | $2,355. | $2,090. | $2,067. | $2,062. | $2,073. |

The Company's figures, shown on transcript pages 162 to 170, incl., include the following items allowed by the Commission, but which

| | | | | | |
|---|---|---|---|---|---|
| properly should have been excluded in computing rate of return where confiscation is the issue, | | | | | |
| Annual local charitable institutions | 74. | ..... | ..... | 40. | 13. |
| Occasional civic and charitable special fund | ..... | 45. | 7. | 8. | 20. |
| Contributions for sustaining Chamber of Commerce | ..... | ..... | 70. | ..... | 23. |
| Other donations | 2. | 2. | 6. | 11. | 6. |
| Chamber of Commerce membership dues | 15. | 30. | 31. | 39. | 34. |
| Other Association expenses | 87. | 73. | 51. | 73. | 66. |
| Midland company services | 656. | 802. | 946. | 559. | 769. |
| Rate Case No. 1 expense | 3,200. | 4,800. | ..... | ..... | 1,600. |
| Rate Case No. 2 expense | 1,724. | 707. | 2,929. | 2,929. | 2,188. |
| Total unallowable expenses | $5,758. | $6,459. | $4,040. | $3,659. | $4,719. |
| Unallowable expenses not excluded by Commission | $3,203. | $4,369. | $1,973. | $1,597. | $2,646. |
| Effect of above unallowable expenses which should have been excluded, upon the rate of return on $189,856.56 valuation | 1.69% | 2.30% | 1.04% | .84% | 1.39% |
| c. Annual reports of the Company show income taxes accrued and charged expenses in the amounts of | ..... | $13,125. | $10,846. | ..... | $7,990. |
| These reports also show payments of income taxes of | ..... | 7,021. | 10,000. | $6,405. | 7,808. |

As the Company's books are kept upon an accrual basis and the amounts of accrued income taxes rather than the amounts paid, are included in its expense account, allocation of such accrued items has been made to Kenton on the basis of the Kenton gross revenues per books to the total gross revenues per books. This results in no allocation of income taxes in the year 1931 although the Company claims deductions for this item in all years.

( ) Indicates red figures.

Finally, if the computations of the company be accepted without qualification it is conceded that upon the basis of the operating expenses allowed by the commission the rate of return for the year ending August 1, 1929, would have been 4.92% and that the rate of return for the calendar years 1929, 1930 and 1931 would have been 4.61%, 4.34% and 3.68%, respectively. These rates of return being the amount that would have been earned by the company upon the basis of the valuation of its property made at a price level existing on August 15, 1929, and wholly disregarding any increase that would have accrued to the company from increased sales that would have resulted from lower rates. We believe that the conclusion is inescapable that had the company had in effect during this period the rates prescribed by the commission the rate of return would have been far greater than that shown in their computations and, certainly, there is no sound foundation for the estimated rate of return which the company contends it would have enjoyed under the commission's rates for the reason that it has never had any experience under those rates as the basis of forming an intelligent judgment.

We believe that an additional factor which the company has failed to recognize exists in the fact that the cost of gas to consumers in Kenton, Ohio, is exceptionally high. We, at least, recognize that it is materially higher than in other communities in Ohio similarly situated. This court during the past year has had before it two gas cases originating in Ohio wherein the ordinance rate in one case was 48¢ and where the average

rate in the other case was slightly in excess of 50¢ per thousand cubic feet. *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio, supra,* and *Dayton Power and Light Company v. Public Utilities Commission of Ohio, supra.* Certainly the consumer is entitled to a utility's product at a rate somewhat commensurate with the value of the service and certainly a utility is not entitled to earn a fixed rate of return irrespective of the value of its commodity to the consumer. It is our firm belief that what constitutes a fair return to any utility must have some relation to the cost of the product furnished to the public as well as the value of that product with relation to the cost. In this case the cost of distributing gas in Kenton is unusually high and that situation can be accounted for only because of the fact that the price of the commodity is so expensive as to discourage use. These distribution costs which are excessive in Kenton, Ohio, can be reduced only by an increased consumption of the product of the company and this increased consumption can be encouraged only by a reduction in the price of the commodity. We submit, therefore, that in light of all the circumstances the rate of return which would have been earned by the West Ohio Gas Company for the furnishing of gas to the city of Kenton, Ohio, for the period that is here involved under the commission's rates would have been fair and reasonable and that there was no evidence in this record to indicate otherwise.

## IV.

## THE ANNUAL REPORTS FOR THE YEARS 1928, 1929 AND 1930, INCLUSIVE, FILED WITH THE COMMISSION BY THE COMPANY PURSUANT TO THE PROVISIONS OF THE OHIO STATUTES AND PUT IN EVIDENCE AS COMMISSION EXHIBITS 1, 2 AND 3, BY THE ORDER OF THE COMMISSION ON ITS OWN MOTION.

On the eighth day of March, 1933, the commission made the following order: (R., 83.)

"Before the Public Utilities Commission of Ohio,
No. 5666.
(Title omitted.)
Order Placing Annual Reports in Evidence.
Upon the commission's own motion and for the purpose of completing the record herein, it is
Ordered, That the annual reports filed with this commission by the West Ohio Gas Company for the years 1929, 1930 and 1931 be, and hereby they are introduced in evidence and made a part of the record herein as Commission Exhibits 1, 2 and 3.
The Public Utilities Commission of Ohio,
E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.
Dated at Columbus, Ohio, this eighth day of March, 1933."

The company now contends that the use of any information contained in its annual reports placed in evidence by the foregoing order of the commission renders the entire order void.

This issue is identical with a similar issue in the Lima case and our entire argument on this question as presented in the Lima case is applicable to the case at bar (See Lima brief, pp. 80-85, inclusive.) We submit that for the reasons there set out and under the authorities discussed that the rate order in the Kenton case is perfectly valid and that the company was not deprived of due process because of the inclusion in the evidence of such annual reports hereinbefore described.

## V.

## VARIOUS OTHER CONTENTIONS ADVANCED BY APPELLANT.

### 1. The contention That the State Supreme Court Erred in Not Finding That the Validity of the Rate Order Must Be Determined By Its Effect on Net Earnings From Year to Year; and That the Rate Order and the Order to Refund Were Invalid Because This Requirement Had Not Been Complied With.

The commission for the purpose of ascertaining the fairness of the rates prescribed in the ordinance passed by the city of Kenton, to become effective on August 16, 1929, took as the period for computing the experience of the company the year ending August 1, 1929, and being the year immediately preceding the effective date of the ordinance. The company complains of this method used by the commission. However, in this brief we have accepted the contentions of the company relating to its

experience during the succeeding years of the ordinance and discussed fully the effect of the commission's rates during that period. The commission, contrary to the contention of the company, did not order any particular refund to the consumers of Kenton for the period involved. It simply instructed the company to refund to the consumers for each of the years in question the difference between the rates prescribed by the commission and the rates collected by the company. And it must be apparent that if the rate of return prescribed by the commission and applicable to each of the years here involved is non-confiscatory for each year then the company has no serious basis for complaint. This topic is more fully discussed in our brief filed in the Lima case at pages 85 to 87 to which reference is now made.

**2. The Contention That the State Supreme Court Erred in Not Holding That the Rate Order is Invalid Because the Commission Refused to Grant the Company a Rehearing, Suitably Requested.**

This topic is fully discussed in our brief in the Lima case at pages 88-89. We shall not repeat that discussion here.

3. **The Contention That the State Supreme Court Did Not Make That Independent Judicial Review of the Law and the Facts Which Due Process and Equal Protection of the Laws Require.**

That matter is likewise fully discussed in our brief in the Lima case at page 89 to 90. We refer the court to that discussion as equally applicable to this case.

4. **The Contention That the State Supreme Court Erred in Not Holding That, on a Statutory Appeal From a Municipal Rate Ordinance, the Commission Was Without Power to Change Existing Rates For Any Period Longer Tahn the Period Designated in the Ordinance.**

While it is true that the ordinance period that was here involved was for two years from August 16, 1929, and would have terminated on August 16, 1931, and while it is likewise true that the commission found that the rates prescribed by it should continue until February 16, 1933, we submit that in view of the fact that at the time of its decision the ordinance period had fully elapsed as well as the period of approximately 18 months following the ordinance period that the commission was fully justified in fixing what would be a fair rate to be charged by the company for furnishing gas to the consumers of Kenton, Ohio, during the entire period. Appellant neglected to cite any decision supporting its contention that the power of the commission was limited to the prescrib-

ing of a fair rate during the ordinance period only and, as a matter of fact, under the Ohio statutes the commission is authorized to establish just and fair rates upon its own motion at any time. (General Code, Section 614-23.) This statute provides in part as follows:

> "Whenever the commission shall be of the opinion, after hearing, that any rate, fare, charge, toll, rental, schedule, classification or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is, or will be, unjust, unreasonable, unjustly discriminatory or unjustly preferential or in violation of law * * * the commission shall, with due regard among other things, to the value of all property of the public utility actually used and useful for the convenience of the public, * * * and all such other matters as may be proper, according to the facts in each case, fix and determine the just and reasonable rate, fare, charge, toll, rental or service to be thereafter rendered, charged, demanded, exacted or collected for the performance or rendition of the service, * * * and thereafter, no change in the rate, fare, toll, charge, rental, schedule, classification or service, shall be made, * * * without the order of the commission."

## CONCLUSION.

The judgment of the court below should be affirmed.

Respectfully submitted,

JOHN W. BRICKER,
Attorney General of Ohio,
DONALD C. POWER,
Assistant Attorney General of Ohio,
Counsel for Appellee, The Public Utilities Commission of Ohio.

Columbus, Ohio, December 5, 1934.

## APPENDIX A.

### Applicable Statutory Provisions.

General Code of Ohio, Section 499-15.

For the purpose of ascertaining the value of the property of every public utility or railroad in this state, including municipally owned or operated utilities, the commission may cause a hearing or hearings to be held at such time or times and place or places as the commission may designate. Before any hearing is had, the commission shall give the public utility or railroad affected thereby, or if the whole or the major portion of said utility or railroad is situated in any municipality, then to the mayor of such municipality, at least thirty days' written notice specifying the time and place of hearing, and such notice shall be sufficient to authorize the commission to inquire into the matters designated in this section, but this provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to, or from inquiring into such matters in any other investigation or hearing. All public utilities or railroads affected, and any municipality in which the whole or the major portion of said utility or railroad is located, shall be entitled to be heard and to introduce evidence at such hearing or hearings. The commission is empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission.

General Code of Ohio, Section 614-23.

Whenever the commission shall be of the opinion, after hearing, that any rate, fare, charge, toll, rental, schedule, classification or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is, or will be, unjust, unreasonable, unjustly discriminatory or unjustly preferential or in violation of law, or the service inadequate, or that the maximum rates, charges, tolls or rentals chargeable by any such public utility are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commission shall, with due regard among other things, to the value of all of the property of the public utility actually used and useful for the convenience of the public, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county, as the consideration for the grant of such franchise or right; and exclusive of any value added thereto by reason of a monopoly or merger and to the necessity of making reservation out of the income for surplus, depreciation and contingencies, and all such other matters as may be proper, according to the facts in each case, fix and determine the just and reasonable rate, fare, charge, toll, rental or service to be thereafter rendered, charged, demanded, exacted or collected for the performance or rendition of the service, and order the same substituted therefor; and thereafter, no change in the rate, fare, toll,

charge, rental, schedule, classification or service, shall be made, rendered, charged, demanded, exacted or changed by such public utility without the order of the commission and any other rate, fare, toll, charge, rental, classification or service shall be deemed and held to be unjust and unreasonable, prohibited and unlawful. Upon application of any person or any public utility, and after notice to the parties in interest and opportunity to be heard as provided in this act for other hearings, has been given, the commission may rescind, alter or amend an order fixing any rate or rates, fare, toll, charge, rental, classification or service, or any other order made by the commission. Certified copies of such orders shall be served and take effect as provided for original orders.

General Code of Ohio, Section 614-44.

(See Appellant's Brief, Appendix A, p. 65.)

General Code of Ohio, Section 614-46.

(See Appellant's Brief, Appendix A, p. 66.)

General Code of Ohio, Section 3982.

(See Appellant's Brief, Appendix A, p. 68.)

General Code of Ohio, Section 3983.

(See Appellant's Brief, Appendix A, p. 68.)

General Code of Ohio, Section 614-48.

Every public utility shall file with the commission, at such times and in such form as it may prescribe, an an-

nual report, duly verified, covering the yearly period fixed by the commission. The commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form therefor. If any such report is defective or erroneous, the commission may order the same to be amended within a prescribed time. Such annual reports shall be preserved in the office of the commission. The commission may, at any time, require specific answers to questions upon which it may desire information.

# SUPREME COURT OF THE UNITED STATES.

No. 213.—October Term, 1934.

| | |
|---|---|
| West Ohio Gas Company, Appellant, *vs.* Public Utilities Commission of Ohio, Appellee. | Appeal from the Supreme Court of the State of Ohio. |

[January 7, 1935.]

Mr. Justice Cardozo delivered the opinion of the Court.

The rates to be charged by the appellant in Kenton, Ohio, are the subject matter of this controversy.

An ordinance adopted by the city council of Kenton on July 16, 1929, effective on August 16, prescribed a schedule of rates within the city for a period of two years. The appellant, West Ohio Gas Company, filed a complaint with the Public Utilities Commission, maintaining its existing schedule for the time being and giving bond as it had done in the Lima case (No. 212), for the return of the excess, if any. The commission fixed the value of the property in Kenton for the purpose of a rate base at $189,856.56. The company acquiesced in the valuation, which for the purpose of this review must be accepted as correct. Thereafter, on March 10, 1933, the commission made a final order determining the ordinance schedule to be unjust and unreasonable, and establishing a new schedule, which was to be effective during the period of the ordinance (August 16, 1929 to August 16, 1931) and a year and a half afterwards (i. e., till February 16, 1933). Collections during the course of the proceeding in excess of the new rates were to be refunded to consumers. A motion for a rehearing having been denied, the company filed a petition in error with the Supreme Court of Ohio, asserting that the order of the commission was in contravention of the limitations of the Fourteenth Amendment. The Supreme Court of Ohio affirmed, writing a single opinion here and in the Lima case. 128 Ohio St. 301. An appeal to this court followed.

The intention of the commission was to establish a schedule of charges that would enable the appellant to receive a return of 6% upon the value of the Kenton property. To accomplish that result there was need of a net income of $11,391.39. As the result of mathematical errors, the commission arrived at the conclusion that income in that amount had been earned in 1929, the year chosen as a standard. In fact the rate of return for that year was only 4.92%, even if all contested rulings in respect of points of law are assumed to be correct.

Errors of computation such as these are far from exhausting the list of defects in these proceedings. There are others more clearly vital. To ascertain the gross income and the operating expenses the commission confined itself to the business in 1929, predicting on that basis the income and expenses to be looked for in the years to follow. Besides the figures for 1929, there was evidence, full and unchallenged, as to the actual revenue and outlay for 1930 and 1931. The commission refused to give any heed to that evidence in fixing the new rates. It did this in the face of a petition for rehearing which sharply brought to its attention the effect of such exclusion. If heed had been given to the later years, the return for 1930 would have been seen to be 4.23% and for 1931, only 3.68%, all this, moreover, on the assumption that further error was not committed in the classification or disallowance of operating charges. If such error existed, the return would be even lower.

We think the adoption of a single year as an exclusive test or standard imposed upon the company an arbitrary restriction in contravention of the Fourteenth Amendment and of "the rudiments of fair play" made necessary thereby. *West Ohio Gas Co.* v. *Public Utilities Commission of Ohio* (appeal No. 1), decided herewith, — U. S. —; *Chicago, Milwaukee & St. Paul R. Co.* v. *Polt*, 232 U. S. 165, 168. The earnings of the later years were exhibited in the record and told their own tale as to the possibilities of profit. To shut one's eyes to them altogether, to exclude them from the reckoning, is as much arbitrary action as to build a schedule upon guesswork with evidence available. There are times, to be sure, when resort to prophecy becomes inevitable in default of methods more precise. At such times, "an honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances" (*Southwestern Bell Telephone Co.* v. *Public Service Commission of Missouri*, 262 U. S. 276, 288; *Los*

*Angeles Gas & Electric Corp.* v. *Public Service Commission of California*, 289 U. S. 278, 311), is the only organon at hand, and hence the only one to be employed in order to make the hearing fair. But prophecy, however honest, is generally a poor substitute for experience. "Estimates for tomorrow cannot ignore prices of today." *Southwestern Bell Telephone Co.* v. *Public Service Commission of Missouri, supra*, at p. 288. We have said of an attempt by a utility to give prophecy the first place and experience the second that "elaborate calculations which are at war with realities are of no avail." *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151, 164. We say the same of a like attempt by officers of government prescribing rates to be effective in years when experience has spoken. A forecast gives us one rate. A survey gives another. To prefer the forecast to the survey is an arbitrary judgment.

In the light of this conclusion we find it needless to dwell upon more particular objections affecting the classification and disallowance of payments which, in the view of the appellant, are charges upon the expenses of operation. For the most part the objections are similar to those considered in number 212, decided herewith. What has been said in that case will guide the commission and the state court in the event of a rehearing.

We are not unmindful of the argument urged by counsel for the commission that the effect of lower prices may be to swell the volume of the business, and by thus increasing revenues enhance the ultimate return. Upon the record as it comes to us, this is guesswork, and no more. There has been no attempt to measure the possible enhancement by appeal to the experience of other companies similarly situated or by any other line of proof. Present confiscation is not atoned for by merely holding out the hope of a better life to come.

The decree is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

*Reversed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*